

Memorandum 2011-21

**Common Interest Developments: Commercial and Industrial Associations
(Comments on Tentative Recommendation)**

In this study, the Commission is considering which provisions of the Davis-Stirling Common Interest Development Act (Civ. Code §§ 1350-1378) (hereafter “Davis-Stirling Act”) should apply to an exclusively commercial or industrial common interest development (“CID”). This memorandum presents and analyzes public comment on the tentative recommendation on *Commercial and Industrial Common Interest Developments* (Feb. 2011) (hereafter “Tentative Recommendation”).

The Commission has received significant comment on the Tentative Recommendation from a stakeholder working group comprised of attorneys and property managers that represent commercial or industrial CIDs (hereafter, “stakeholder group”). This group has been working with the Commission on this study since shortly after its inception. The first two submissions from this group, an email and a mark-up of a draft of the proposed legislation contained in the recommendation, were discussed at an informal meeting between representatives of the group and Commission staff that occurred on April 20, 2011. After the meeting, the group submitted a letter with additional comment. The staff continues to be grateful for the contributions to this study from the members of this group.

These submissions are attached in the Exhibit, as follows:

	<i>Exhibit p.</i>
• Duncan McPherson, Stockton (4/14/11)	1
• Stakeholder Group Mark-Up of Proposed Legislation (4/14/11).....	2
• Jeffrey Wagner, Walnut Creek (4/28/11)	59

Except as otherwise indicated, all statutory references in this memorandum are to the Civil Code.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

BACKGROUND OF STUDY

The overall goal of this study is to exempt exclusively commercial and industrial CIDs from provisions of the Davis-Stirling Act that primarily relate to and benefit only residential developments, and are unnecessary and burdensome when applied to commercial and industrial developments. This rationale served as the basis for the enactment of Section 1373, a section enacted in 1988 that exempted exclusively commercial and industrial CIDs from seven provisions of the Davis-Stirling Act as it existed at that time.

Since 1988, however, many new Davis-Stirling Act provisions relating primarily or solely to residential developments have been enacted, while the list of exemptions in Section 1373 has been expanded on only two occasions. As a result, commercial and industrial CIDs are now governed by a substantial number of Davis-Stirling Act provisions that appear to create unnecessary burdens for such CIDs, without providing significant benefit to them.

The Tentative Recommendation would make the Davis-Stirling Common Interest Development Act inapplicable to exclusively commercial or industrial CIDs, and create a new statute to govern those CIDs. The new statute would contain only those Davis-Stirling Act provisions that the Commission found to be appropriate for commercial and industrial CIDs. This drafting approach will ensure that new CID provisions that are only intended for residential CIDs are not inadvertently also applied to commercial and industrial CIDs.

In preparing the draft language on commercial and industrial CIDs, the Commission decided to parallel the language and organization used in the Commission's recommendation on *Statutory Clarification and Simplification of CID Law* (2011). Legislation to implement that recommendation is presently pending in the Legislature. See Assembly Bills 805 and 806 (Torres).

If both Commission proposals are eventually enacted, the provisions that are common to both will be identical in wording and structure. This approach has the following benefits:

- (1) It will be clear that prior court decisions construing common language should continue to be considered in both contexts.
- (2) It will make clear that there is no intention that the two bodies of law be interpreted differently with respect to their common provisions.

- (3) It will incorporate all of the improvements made in the recodification recommendation into the language on commercial and industrial CIDs.

COMMENT OVERVIEW

The stakeholder group expresses general support for the Commission recommendation, based on two primary considerations:

A separate act would (1) statutorily recognize the distinct differences between residential and commercial developments and the interest of owners in each type of development and (2) eliminate a recurring problem when laws enacted to protect residential owners are inadvertently applied to commercial developments.

Exhibit p. 59.

The group also offers a number of suggestions for improvement of the proposed law. Some of those suggestions involve matters that are directly relevant to the main issue in this study: determining which provisions of the Davis-Stirling Act should apply to a commercial or industrial CID. Those suggestions are discussed in this memorandum, along with a few other suggestions that are relevant only to the proposed statutory treatment of commercial and industrial CIDs.

Other suggestions involve proposed improvements to language that would be common to both this study and the recommendation to recodify the Davis-Stirling Act that is currently before the Legislature. Those suggestions will be discussed in a future memorandum or a supplement to this memorandum.

APPLICATION OF PROPOSED LEGISLATION

The proposed law would apply only to a CID

that is limited to industrial or commercial uses by zoning or by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the common interest development is located.

Proposed Section 6531; see also proposed Section 6582. That language is taken verbatim from existing Section 1373. Because the scope of the proposed law is based on existing language, this study can be described as extrapolating from principles underlying existing law. If the scope of the study were changed, it

would be more difficult to present the study to the Legislature as being grounded on already settled policy principles.

The stakeholder group has three suggestions regarding the scope of application of the proposed law. The suggestions are analyzed below.

Residential Rental as “Commercial Use”

The stakeholder group describes a special CID configuration that it believes should be considered commercial, but that may not be seen as commercial under the language of Section 1373 or proposed Section 6531.

The special case is a CID where each of the “separate interests” is restricted to commercial use by the CID’s governing documents, but one of the permitted commercial uses is the rental of a separate interest as a residence.

For example, suppose that a five-story building is developed as a CID. The declaration provides that four of the separate interests, on the building’s ground floor, are to be used for the operation of retail stores. The fifth separate interest consists of the remainder of the building — the entirety of floors two through five. Each of those floors is constructed to serve as a residential flat. The declaration provides that the fifth separate interest can only be used for residential leasing of the four flats.

Is such a CID limited to commercial uses, for the purposes of Section 1373 and proposed Section 6531? The answer may depend on whether the statute is concerned with the *owner’s use* of the property (i.e., is the owner limited to using the property for a commercial purpose?) or with the *activity* that occurs within the separate interest (i.e., does the separate interest serve as a residence?).

If Section 1373 is concerned only with the use of the CID by its owners, then the CID described above would arguably be limited to commercial uses. Each of the owners in the hypothetical CID is restricted by the declaration to using their separate interests for commercial purposes. Under that analysis, it wouldn’t matter what type of commerce is being conducted in a separate interest. A separate interest that is limited to being used as a hotel or an apartment is no different from a separate interest that is limited to being used as a retail store. In each case, the governing documents limit the owner to using the property as a commercial endeavor.

If, however, the statute is concerned with the character of the activity that takes place in the separate interest, then the CID described above is arguably not

exclusively commercial. On its face, a CID that includes residences would seem to be partly “residential,” rather than “exclusively commercial.”

To determine whether the statute should turn on the use of the separate interest by the owners or on the activity taking place within the separate interest, it may be helpful to consider some of the policy justifications expressed by the Legislature for treating commercial and industrial CIDs differently from residential CIDs. The Tentative Recommendation summarizes those policy justifications as follows:

- Commercial and industrial CIDs are “business endeavors in which the parties engage the services of attorneys, accountants, management companies, and developers.”
- Unlike owners in residential CIDs, owners in commercial and industrial CIDs are “well-informed” and “governed by other provisions of commercial law.”
- “The operational needs of commercial and industrial CIDs are different than the needs of residential [CIDs].” For example, a commercial or industrial CID may require greater flexibility than a residential CID, in order to address significant business-related changes in the development’s use, facilities, and costs.
- Regulatory requirements designed to protect residential owners “interfere with commerce, and increase the costs of doing business.”

See Tentative Recommendation, p. 4 (quoting Senate Rules Committee Analysis of AB 2484 (May 18, 1988) (on file with Commission)).

These policy considerations suggest a focus on the character of the owner as a well-informed and sophisticated business person engaging in a business endeavor, as opposed to a comparatively unsophisticated owner of a residence. The Legislature also noted the significant differences between the operational needs of business owners, who benefit from efficiency and flexibility, and residential owners who benefit from stability and protection.

Viewed from that perspective, a good argument could be made that a CID in which all of the units are restricted to commercial uses — regardless of the *nature* of the commercial endeavor — is exclusively commercial under Section 1373. Under that argument, the hypothetical CID discussed above is already governed by Section 1373 (and by extension should be governed by our proposed law).

However, there is another way to look at this issue. If the Davis-Stirling Act is concerned in part with protecting the rights of persons who *occupy* separate

interests (regardless of whether they are owners), then that same concern would arguably extend to the tenants in the hypothetical CID described above.

Is the Davis-Stirling Act concerned with protecting the rights of non-owner occupants of separate interests? In part, it is. There are some provisions of the Davis-Stirling Act that provide rights or privileges to non-owner occupants (either directly or by limiting the association's authority to restrict certain property uses). See, e.g., Sections 1353.5 (display of U.S. flag), 1353.6 (display of noncommercial sign), 1360.5 (possession of pet), 1361.5 (right of access to separate interest), 1364(d)-(e) (notice before being removed for termite treatment of separate interest). There is a good argument that the Legislature would intend for such protections to apply to *any* occupant of a CID, including a residential tenant in an exclusively commercial CID.

However, each of those provisions would be continued in the proposed law, and so would remain applicable to a commercial or industrial CID. Thus, to the extent that the Legislature intended for those rights to apply to all CID occupants, regardless of the residential or commercial character of the CID, the proposed law would be consistent with that intention.

Based on the foregoing analysis, it may be that Section 1373 already applies to a CID that limits all of its separate interests to commercial uses, even if one of those uses is residential rentals. If that is correct, then it might be worthwhile to adjust the language of the application provision of the proposed law, to avoid any confusion on this point. This could perhaps be done by adding a sentence to Section 6531 (with a parallel revision to Section 1373), along these lines:

6531. A "commercial or industrial common interest development" means a common interest development that is limited to industrial or commercial uses by zoning or by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the common interest development is located. If the declaration provides that a separate interest may only be leased by the owner, the separate interest is deemed to be limited to commercial use for the purposes of this section.

On the other hand, it might be best to leave this issue alone for now. One of the key principles that the Commission has followed in this study is that it is simply extending existing policy principles that have already been articulated and approved by the Legislature and Governor. If the Commission were to tinker with the language of Sections 1373 and 6531, it might appear that it was going

beyond the established policy by applying commercial exemptions to CIDs that are not exclusively commercial in character. As discussed above, there is an argument that the proposed change would simply be a clarification of existing law, rather than a substantive broadening. But that argument is subtle and complicated, and might not be persuasive.

With all of that in mind, the Commission needs to decide whether to clarify the scope of the proposed law (and existing Section 1373) or make no change to the existing language.

Personal Uses

The stakeholder group also suggests that the proposed law should apply to certain uses that are arguably neither residential nor commercial or industrial, e.g., “boating, camping or other recreational uses, parking, storage or other non-residential uses.” See Exhibit p. 2. So, for example, if a marina is developed as a CID, with each boat slip as a separate interest (and the docks and other facilities as common area), the stakeholder group believes that the CID is “nonresidential” and should therefore be governed by the proposed law, rather than by the “residential” Davis-Stirling Act.

The staff believes that this would be a significant substantive change from existing law. If a person owns a boat slip, parking space, or storage unit for their own personal use, it is difficult to see how that could be characterized as a commercial use of the property. There is no commerce taking place if an owner docks her own boat in her own boat slip. Nor is there any reason to think that the boat owner is any more sophisticated than a typical residential property owner, or requires a special degree of flexibility and efficiency in order to avoid any interference with business activity.

Therefore, the staff does not see how the policy principles being applied in this study (discussed above) would justify extending the scope of the proposed law to include these types of nonresidential personal use CIDs.

There may be a good argument for doing so, but that is a separate policy question that is not within the scope of the current study. **The staff recommends against making this requested change.**

Preferred Terminology

The stakeholder group also suggests that the proposed law use the term “nonresidential CID” rather than “commercial or industrial CID.” That would

make sense if the proposed law were revised to apply to personal noncommercial uses as discussed above. In that case, use of the term “commercial or industrial CID” would be a misnomer. **However, because the staff recommends against broadening the scope of the proposed law in that way, it also recommends against making this change in terminology.**

DELETION OF PROVISIONS FROM PROPOSED LAW

The stakeholder group suggests that the Commission should revisit and reverse several Commission decisions to continue a provision of the existing Davis-Stirling Act in the proposed law. At the April 20 meeting, representatives from the group offered that, in a commercial or industrial development, the subject matter of many of these provisions can be individually negotiated between a prospective owner and the developer, and need not be legislated.

In deciding whether or not a Davis-Stirling Act provision should be continued in the proposed law, the Commission has generally started with a determination of whether the provision appeared to be more foundational in nature (i.e., a provision that relates to the fundamental character of the CID property ownership form), or more operational (i.e., a provision that imposes mandatory procedures for the operation of a CID’s governing association). See Tentative Recommendation, p. 5. Provisions that the Commission determined to be primarily foundational have consistently been continued in the proposed law. Provisions determined to be primarily operational have generally not been continued, although the Commission has found that some operational provisions should be continued in the proposed law based on other policy considerations. See Tentative Recommendation, pp. 6-7.

Owner Property Use Provisions

The group suggests that commercial and industrial CIDs should not be subject to the following provisions, which guarantee an owner’s right to use separate interests in specified manners:

- Section 6704 (display of noncommercial signs)
- Section 6706 (pet ownership)
- Section 6708 (installation of television antenna or satellite dish)
- Section 6712 (use of drought resistant plants)

Exhibit pp. 34-36, 37.

The Commission previously decided to continue the property use provisions described above because the Commission concluded that the provisions are foundational rather than operational. The provisions define part of the bundle of rights that is held by the owner of a separate interest. They have little to do with regulating association governance procedures or operations.

The staff recommends that **these provisions remain in the proposed law.**

If the Commission disagrees, and decides that the provisions should be removed from the proposed law, that change should probably be made prospective only. For current owners of separate interests in commercial and industrial CIDs, the rights conferred by these sections are likely vested.

Declaration Provisions Relating to Developer of CID

Proposed Section 6608, continuing existing Section 1355.5, permits the amendment of a CID governing document to delete a provision designed and intended to facilitate the developer of the CID in building or marketing the development, once that construction and marketing is completed, notwithstanding a provision in a governing document prohibiting such amendment.

The stakeholder group suggests that this section be deleted from the proposed law, indicating that the section is “only suitable for residential CIDs.” Exhibit p. 20. At the April 20 meeting, representatives of the group explained further that the section is not needed in commercial or industrial developments, because amendments to governing documents in such developments are generally easier to make than they are in residential developments.

As the Commission previously concluded, this section does not appear to be focused on the daily operations of a CID’s governing body, but instead appears designed to establish a baseline principle relating to the governing *documents* of a CID. As such, the provision appears to be, at minimum, more foundational than operational.

Further, the continued application of this provision should not create any additional burden in such CIDs. It is optional. To the extent it is procedurally easier to amend governing documents using methods provided in other sections, the CID would remain free to use those other methods.

The staff recommends that **proposed Section 6608 be retained in the proposed law.**

Prohibition Against Unlawful Restrictive Covenants

Proposed Section 6606, continuing existing Section 1352.5 without substantive change, provides that no CID governing document “shall include a restrictive covenant in violation of Government Code Section 12955.”

The stakeholder group argues that, as Government Code Section 12955 “only applies to residential units,” Section 6606 has no application to commercial or industrial CIDs, and should therefore be deleted from the proposed law. Exhibit p. 20.

Government Code Section 12955 clearly is *primarily* concerned with housing discrimination. However, at least two of the many subdivisions of the section are not explicitly limited to such discrimination:

12955. It shall be unlawful:

....

(i) For any person or other organization or entity whose business involves real estate-related transactions to discriminate against any person in making available a transaction, or in the terms and conditions of a transaction, because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, source of income, familial status, or disability.

(j) To deny a person access to, or membership or participation in, a multiple listing service, real estate brokerage organization, or other service because of race, color, religion, sex, sexual orientation, marital status, ancestry, disability, familial status, source of income, or national origin.

Section 6606 is a foundational provision. It does not in any way relate to the management of the day to day affairs of an association, but instead directly addresses whether the membership of a CID may be artificially restricted based on any of the criteria listed in Section 12955. As a general matter, it would be appropriate to continue the provision’s application to commercial and industrial CIDs.

If the provision has *no* application, then it is mere surplusage and would not create any burden for commercial or industrial CIDs. But if the provision has *any* perceived application to such CIDs, then deletion of the provision from the proposed law would be viewed as a substantive change. Such a change, which would likely be seen as removing a legal obstacle to certain types of invidious discrimination, would probably be very controversial.

The staff recommends that **proposed Section 6606 be retained in the proposed law.**

Construction Defect Litigation Provisions

Chapter 9 of the proposed legislation contains three sections, Sections 6870, 6874, and 6876, that relate to aspects of construction defect litigation involving a CID. The sections continue three sections of existing law, Sections 1368.5, 1375, and 1375.1, without substantive change.

The stakeholder group suggests that all three sections should be deleted from the proposed legislation, indicating that such provisions “while potentially usable in our experience are not used in commercial projects.” Exhibit pp. 1, 58.

Unless such litigation doesn’t ever occur in commercial or industrial CIDs, the staff doesn’t understand why these sections are not used in commercial projects, as they all contain mandatory provisions.

When the Commission previously considered whether to continue these sections in the proposed law, it characterized the provisions as operational, and there appears to be no reason to depart from that characterization.

However, the Commission previously concluded that the provisions should nevertheless be continued in the proposed law, because the provisions in these sections were carefully negotiated by several competing interest groups. Because these provisions affect third parties who are not part of the association, it is not clear that the policy rationales applied in this study, which focus exclusively on the needs of property owners, would justify exempting commercial property owners from the construction defect litigation provisions. Such an exemption would also affect the interests of potential construction defect defendants.

The staff recommends that **proposed Sections 6870, 6874, and 6876 be retained in the proposed law.**

Maintenance Provisions

The stakeholder group suggests that proposed Sections 6718 and 6722, both relating to maintenance within a CID, be deleted from the proposed law. Exhibit pp. 39, 40. No additional rationale is offered in support of the suggestions.

Proposed Section 6718 places the responsibility for keeping the common area of a CID free from termites on the CID association, rather than on the owners. Proposed Section 6722 guarantees owners in a CID access to the common area, in order to maintain communication wiring relating to their separate interests. Both sections continue sections of existing law without substantive change. See Sections 1364(b)(1), 1364(f).

The Commission has previously classified both of these provisions as foundational, finding that they both express basic principles relating to ownership of property within the CID property form, and neither relate to the regular or routine operation of a CID's governing body. Memorandum 2009-32, p. 42.

The staff recommends that **both sections be retained in the proposed law.**

State Provided Director Training Course

Proposed Section 6760, which continues the substance of existing Section 1363.001, provides that, to the extent funds are available, two specified state agencies shall develop an online education course for CID boards relating to CID governance.

With no rationale offered, the stakeholder group suggests that Section 6760 be deleted from the proposed law. Exhibit p. 43.

This provision is difficult to classify as either foundational or operational, as it does not directly govern a CID at all. However, it is difficult to see how any CID could be adversely affected by the provision, which offers an *optional* training resource.

On the other hand, the provision might be seen as imposing a new duty on the responsible agencies, requiring them to prepare new course content specific to the governance of commercial and industrial CIDs. Of course, the statute specifically provides that the duty only exists to the extent that funds are available, but it still might be problematic to propose a new government duty when the state is struggling with a financial crisis. What's more, it does seem likely that the provision was drafted with homeowners in mind. Under the policy logic of Section 1373, sophisticated business owners are in less need of this type of assistance, arguably making this provision "unnecessary."

The Commission should consider deleting the provision from the proposed law.

Assessment Collection Provisions

The stakeholder group also suggests deletion of two provisions that bear on the collection of assessments in a commercial or industrial CID. Exhibit pp. 46, 48.

In the existing Davis-Stirling Act, these provisions are contained along with many other provisions in a single lengthy statutory section, Section 1367.1.

Because Section 1367.1 was rewritten in its entirety in 2005 and then re-enacted in largely its present form as a single section, there is some possibility that an individual provision within the section was designed and intended to serve as essential support for another provision in the section.

This possibility adds another layer to the evaluation of whether to delete from the proposed law any individual provision presently appearing in Section 1367.1. Before addressing other considerations, the Commission needs to insure that a provision is not needed to implement or supply meaning to another provision of Section 1367.1 that would be continued in the proposed law.

Payment of Delinquent Assessments

Proposed Section 6810(a), continuing existing Section 1367.1(b) without substantive change, provides that payments made by an owner toward assessments shall first be applied to the assessment balance, and only after the assessments owed are paid in full shall payments be applied to fees and costs, late charges, or interest.

The stakeholder group suggests that this provision should be deleted from the proposed law. Exhibit p. 46. At the April 20 meeting, representatives from the group advised that the deletion is suggested because the provided-for practice conflicts with customary debt collection practice.

It is likely true that the standard contractual agreement in most debtor-creditor relationships provides that any payment will first be credited to any outstanding fee or interest balance, and credited against principal only after all other balances are paid in full. The primary effect of the different treatment provided by Section 6810(a) is a potential substantial reduction in the owner's total debt (arguably at the expense of the association), as conventional treatment would allow additional late fees and corresponding interest to be assessed each month until the owner paid all accrued late fees and outstanding interest.

This provision appears to be severable from the other provisions in existing Section 1367.1, as it relates only to the narrow question of how payments of assessments are credited, rather than when, whether, or how they are made.

As to the characterization of the provision, the staff sees it as plainly operational, as it regulates the manner in which an association credits payments from its members. The staff also sees no other consideration that would dictate inclusion of the provision in the proposed law. The provision simply addresses

one aspect of a recurring business transaction between two commercial entities, for which a commercial or industrial owner should not need statutory protection.

The staff recommends that **Section 6810(a) be deleted from the proposed law.**

Secondary Address For Collection Notices

Proposed Section 6814(f), continuing existing Section 1367.1(k), allows an owner to request that a notice of delinquent assessment be sent to a secondary address provided by the owner, and obligates the association to notify owners of this right.

The stakeholder group suggests that this subdivision should be deleted from the proposed law. Exhibit p. 48. No additional rationale for the suggestion is offered.

Section 6814 as a whole continues the provisions of existing Section 1367.1 that relate to the issuance of a notice of delinquent assessment. The section provides detailed requirements relating to the notice, which must be recorded, and contains a distinct subdivision that specifies how and to whom a copy of the recorded notice must be delivered. See Section 6814(e).

The staff believes that the provision in Section 6814(f), which relates only to the giving of a secondary notice, can be safely severed from the other provisions in Section 1367.1 without adversely affecting the meaning or implementation of any other provision that the Commission would continue in the proposed law.

Once past that consideration, adherence to the Commission's chosen methodology in this study again dictates an evaluation of whether the provision appears to be more foundational or more operational.

The staff believes the provision to be clearly operational. It requires an association to engage in one of what might be a number of possible means that an association might use (if there was a need to use any at all), to provide a back-up notification to an owner of a past due assessment.

The staff also sees no independent consideration that would warrant including the provision in the proposed law, notwithstanding its operational nature.

The staff recommends that **Section 6814(f) be deleted from the proposed law.**

Board Authority to Impose Monetary Penalties

Proposed Section 6854 concerns a board's authority to impose monetary penalties on its members. Although the stakeholder group suggests the deletion of this provision, at the April 20 meeting representatives of the group indicated that this deletion was suggested in error.

Attorney's Fees in Enforcement Action

Proposed Section 6856(c), continuing existing Section 1354(c) without change, provides that in an action by either an owner or an association to enforce a provision of a governing document, the prevailing party shall be awarded reasonable attorney's fees and costs.

The stakeholder group suggests that this fee shifting provision should be deleted from the proposed law. Exhibit p. 61. The group asserts that the provision was added to Section 1354 "primarily to protect the interests of individual residential owners," and that owners in commercial developments "should retain the right to choose whether or not to award attorneys' fees to the prevailing party in this situation."

If this provision were deleted from the proposed law, the awarding of attorney's fees and costs in an action to enforce the governing documents of a commercial or industrial CID might be addressed in the governing documents. If not, it is likely there would be no basis for awarding attorney's fees to either party, and costs would be awarded pursuant to Code of Civil Procedure Section 1033.5 and any other applicable code provisions.

Should the special fee shifting provision be retained in the proposed law? It might be argued that the provision is foundational, because it is an integral part of Section 1354. That section prescribes which documents can be enforced and provides for an allocation of enforcement costs. Thus, it could be seen as establishing a fundamental principle about the relationship between individual owners and the association with respect to the governing documents that bind them.

On the other hand, the fee shifting provision may well have been added to the law with the intention of protecting individual homeowners. Fee shifting provisions are often enacted to level the playing field between parties with disparate financial resources. In a CID, the association can finance litigation by assessing all of the members collectively. An individual homeowner must self-finance. In general, that structural disparity of resources makes it easier for an

association than an individual homeowner to commence or defend against suit. The fee shifting provision at least provides the possibility that a homeowner who sues or defends against suit will recover litigation costs.

Of course, Section 1354(c) is a two-edged sword. An individual homeowner might actually be deterred from suing or defending against suit by the prospect of paying the association's attorney's fees if the association prevails. With that in mind, perhaps the fee shifting provision is not a homeowner protection provision at all, but merely a mechanism for making governing document enforcement more affordable.

In any event, there is an argument to be made that sophisticated business property owners don't need the Legislature to decide how to allocate enforcement costs in their associations. Instead, they should be free to decide between themselves on whatever cost allocation rule makes the best sense for their business operations.

The staff is unsure whether the fee shifting provision should be retained in the proposed law. It arguably has a foundational aspect. But it may have been intended as a special "consumer protection" for homeowners, which is not needed by business property owners.

"COMMON INTEREST DEVELOPMENT"

Proposed Section 6534, continuing existing Section 1351(c) verbatim, provides that a "common interest development" means any of the following: a community apartment project, a condominium project, a planned development, or a stock cooperative. The stakeholder group suggests that the reference to a community apartment project should be deleted from this list, and the remainder of the proposed law, because it is "by definition residential." Exhibit p. 12. The group suggests that references to stock cooperatives should be dropped because they "are used for residential development only." Exhibit p. 12.

A "community apartment project" is defined by proposed Section 6536 as a development in which "an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon." The term "apartment" is not defined by the proposed law, nor does it appear to be defined by any other section in the Civil Code. Common dictionary definitions, however, indicate that the term has a residential connotation.

As there appears to be no basis upon which a commercial or industrial CID could be organized as a community apartment project, the staff recommends that **all references to “community apartment project” in the proposed law be deleted.**

On the other hand, nothing in the definition of “stock cooperative” suggests that a stock cooperative must *necessarily* involve residential use. Rather, Section 6566, which continues existing Section 1351(m) without change, defines a stock cooperative as a development in which a corporation holds title to all real property in the development, and shareholders in the corporation receive a right of exclusive occupancy in a designated portion of that property.

While it may not be common practice, there appears to be no reason why a commercial or industrial CID could not *choose* to organize as a stock cooperative. In fact, notwithstanding the stakeholder group’s representation, there is no easy way to verify that no commercial or industrial CID somewhere in the state isn’t presently organized as a stock cooperative.

The staff recommends that **all references to “stock cooperative” remain in the proposed law.**

COMMON AREA IN A PLANNED DEVELOPMENT

Proposed Section 6562, which generally continues existing Section 1351(k), defines a “planned development,” one of the four types of CID:

6562. “Planned development” means a real property development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:

(a) Common area that is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area.

(b) Common area and an association that maintains the common area with the power to levy assessments that may become a lien upon the separate interests in accordance with Article 2 (commencing with Section 6808) of Chapter 6.

The definition in subdivision (b) is a special case, where the “common area” is comprised of “mutual or reciprocal easements appurtenant to the separate interests.” See proposed Section 6532(b). For example, in a development described by Section 6562(b), each separate interest owner might own a different portion of a roadway, with all of the owners having reciprocal easement rights to

travel over each others' portions. However, such a development constitutes a planned development only if there is also "an association that maintains the common area with the power to levy assessments that may become a lien upon the separate interests in accordance with Article 2 (commencing with Section 6808) of Chapter 6."

The stakeholder group observes that some commercial developments use reciprocal easement agreements for parking lots or other shared facilities. Exhibit pp. 60-61. But many of these developments do not consider themselves to be planned developments, because they have no association with the power to lien. Instead, one of the owners or a manager is authorized to collect assessments to pay for the common facilities. Read literally, Section 6532(b) would not include such a development, because of the lack of an association.

However, the stakeholder group is concerned that the owners might collectively be considered an unincorporated association, thereby bringing the development within the scope of Section 6532(b).

To avoid the unintended application of Section 6562(b) to such developments, the group suggests adding a paragraph to the end of Section 6562, providing that a commercial or industrial development with common area consisting of only reciprocal easements does *not* constitute a "planned development," unless the development elects such status:

[A] real property development which has no common area other than mutual or reciprocal easements appurtenant to the separate interests is not a planned development regardless of whether there are lien rights unless the declaration contains an election that the development be considered a planned development.

Exhibit p. 15.

Analysis

Despite the manner in which the proposed language is drafted, it might be viewed in substance as a request that a provision of the existing Davis-Stirling Act — the special definition of "planned development" in which the common area consists of only reciprocal easements — be made inapplicable to commercial and industrial CIDs because of a consideration relevant only to those CIDs. However, as indicated, in deciding whether to include or exclude an existing Davis-Stirling Act provision in the proposed law, the Commission has generally relied on whether it believed the Davis-Stirling Act provision to be more

foundational in nature, or operational. As the provision at issue in part determines whether or not a real estate development constitutes a CID, it would seem impossible not to classify the provision as foundational, and appropriately included in the proposed law.

The suggestion of the stakeholder group might be an improvement to existing law. However, the staff believes it would be best considered as part of a separate study. Inclusion in the proposed law would be inconsistent with the methodology that the Commission has used in this study, and would undermine the characterization of the Commission's recommendation as a straightforward application of the principles underlying Section 1373.

The staff recommends that **this suggested revision not be incorporated in the proposed law. Instead, it should be studied in connection with the planned study of CID formation issues.**

AMENDMENT OF CONDOMINIUM PLAN

A "condominium plan" is a recorded document that describes a condominium project, another of the four types of CIDs. To record a condominium plan, proposed Section 6626, continuing existing Section 1351(e)(3), requires the unanimous consent of all owners and lenders involved in the project:

6626. (a) The certificate consenting to the recordation of a condominium plan that is required by subdivision (c) of Section 6624 shall be signed and acknowledged by all of the following persons:

(1) The record owner of fee title to that property included in the condominium project.

(2) In the case of a condominium project that will terminate upon the termination of an estate for years, by all lessors and lessees of the estate for years.

(3) In the case of a condominium project subject to a life estate, by all life tenants and remainder interests.

(4) The trustee or the beneficiary of each recorded deed of trust, and the mortgagee of each recorded mortgage encumbering the property.

Amendment of a condominium plan requires the unanimous consent of all persons who, at the time of the proposed amendment, are persons described in Section 6626. See proposed Section 6628.

The stakeholder group suggests a substantial modification of the requirement of unanimous consent to amend a condominium plan. Exhibit p. 61.

The group explains that, as contrasted with residential condominiums, most commercial condominiums are initially constructed as shells, with the size of individual units inside later determined by each individual buyer's specific needs. Further, because the types of uses within a single commercial condominium can vary significantly over time, the size of the units may also change over time. Such changes to the boundaries of separate interests would require an amendment of the condominium plan.

Because of these practical realities, the group asserts that it is unduly burdensome to require the unanimous consent of all owners and lenders on the project whenever the boundaries of one or more separate interests changes. This forces developers to engage in complex schemes designed to circumvent the need to amend the condominium plan.

The group suggests that Section 6628 be revised to only require the signatures of those who have interests in the separate interests that have been modified, rather than requiring the signatures of everyone who has an interest in the condominium plan as a whole:

6628. A condominium plan may be amended or revoked by a recorded instrument that is acknowledged and signed by all the persons who, at the time of amendment or revocation, are persons whose signatures are required under Section 6626. If an amendment to the condominium plan is for the purpose of transferring portions of a separate interest or interests to another separate interest or interests or in connection with the subdivision of a separate interest into two or more separate interests and modifying the common area resulting from the transfer or subdivision and the amendment is in compliance with any applicable requirements set forth in the declaration, the recorded document need only be acknowledged and signed by those persons whose signature would be required at the time of the amendment under Section 6626 if the condominium project consisted solely of the separate interests modified by the amendment. The board, without the approval of the members, may adopt an amendment to the declaration if the amendment to the condominium plan affects the voting or assessment allocations set forth in the declaration. If the declaration is amended under this section, the board shall record the amendment in each county in which the common interest development is located.

Exhibit p. 27.

Analysis

On its face, the suggestion seems to make sense. However, a substantive change of this type is beyond the scope of the current study. The Commission is examining the extent to which existing provisions of the Davis-Stirling Act should apply to commercial and industrial CIDs. It is not engaged in a study of how to modify the Davis-Stirling Act provisions to better suit the needs of commercial and industrial CIDs.

The staff recommends that **this suggested revision not be incorporated in the proposed law. Instead, it should be noted for possible future study, in connection with CID formation issues.**

GENERAL NOTICE

Proposed Section 6516, a provision adopted from the proposed recodification legislation, sets forth methods by which a document may be delivered when a provision in the proposed law requires “general delivery” or “general notice.”

The stakeholder group suggests that one of the methods authorized by Section 6516, the broadcasting of television programming, may not be an appropriate method for providing notice in a commercial or industrial development, and suggests substituting the use of websites or webcasts (broadcasts of information over the Internet). Exhibit p. 9.

In evaluating that suggestion, the staff realized that Section 6516 *has no application in the proposed law*. That is, there are no provisions of the proposed law that call for a “general notice” or require a notice to be sent by “general delivery.” Consequently, any discussion of the methods that should be authorized for the delivery of general notices is entirely academic at this point.

Rather than spend time on theoretical problems, **the staff recommends that Section 6516 be deleted from the proposed law.** There is no compelling reason to include a provision that has no operative effect.

If, in the future development of the law, the Legislature sees a need for a notice to be delivered by general delivery methods, a provision along the lines of Section 6516 could be added at that time, with whatever characteristics are appropriate in the real context in which the section would be applied.

If the Commission decides to delete Section 6516, **the staff also recommends the following conforming revisions:**

~~6551. “General notice” means the delivery of a document pursuant to Section 6516.~~

6756. To be effective, any of the following requests shall be delivered in writing to the association, pursuant to Section 6512:

(a) A request to change the member’s information in the association membership list.

(b) A request to add or remove a second address for delivery of documents to the member pursuant to Section 6814.

~~(c) A request for individual delivery of general notices to the member, pursuant to subdivision (b) of Section 6516, or a request to cancel a prior request for individual delivery of general notices.~~

OPERATING RULES

Existing law on the validity of operating rules and rulemaking procedures (Sections 1357.100-1357.150) was enacted on the Commission’s recommendation. See *Common Interest Development Law: Association Rulemaking and Decisionmaking*, 33 Cal. L. Revision Comm’n Reports 81 (2003); 2003 Cal. Stat. ch. 557. While the bill to implement that recommendation was pending in the Legislature, the Community Associations Institute requested that commercial and industrial CIDs be exempted from the new requirements. See Memorandum 2003-23, pp. 4-6. The author of the bill agreed to the change, and the bill was amended to create the requested exemption. See Section 1373(a)(2).

The Tentative Recommendation would continue that existing exemption.

The stakeholder group is requesting that part of the substance of these operating rule provisions be included within the proposed law. Specifically, the group requests that proposed Section 6752, which specifies powers of the governing association, be revised to include the following language:

The board may adopt and enforce reasonable written operating rules that apply generally to the management and operation of the common interest development or the conduct of the business and affairs of the association. An operating rule is unenforceable to the extent it is inconsistent with governing law or the governing documents.

Exhibit p. 41.

The substance of that language is similar to existing Sections 1357.100(a) and 1357.110, which provide as follows:

1357.100. (a) “Operating rule” means a regulation adopted by the board of directors of the association that applies generally to the

management and operation of the common interest development or the conduct of the business and affairs of the association.

1357.110. An operating rule is valid and enforceable only if all of the following requirements are satisfied:

- (a) The rule is in writing.
- (b) The rule is within the authority of the board of directors of the association conferred by law or by the declaration, articles of incorporation or association, or bylaws of the association.
- (c) The rule is not inconsistent with governing law and the declaration, articles of incorporation or association, and bylaws of the association.
- (d) The rule is adopted, amended, or repealed in good faith and in substantial compliance with the requirements of this article.
- (e) The rule is reasonable.

Should the substance of those provisions be included in the proposed law?

As discussed above, in this study the Commission has drawn a distinction between “foundational provisions” and “operational provisions.”

Arguably, the sections in existing law governing operating rules, all contained within a single statutory article, include provisions of both types. The two sections set out above recognize the authority of the board to adopt operating rules, within specified parameters. These are enabling provisions that establish a governance power without specifying procedures for how it is to be exercised. They could therefore be described as foundational.

By contrast, the remaining provisions of the rulemaking article specify detailed procedures for the adoption, amendment, or repeal of operating rules, including a referendum procedure that was specifically adopted to give homeowners more of a direct say in association governance. See Sections 1357.120-1357.150. One could reasonably describe those as operational provisions.

Viewed from that perspective, the policy rationale underlying this study would seem to justify applying the substance of Sections 1357.100(a) and 1357.110 to commercial and industrial CIDs. Those sections provide a useful governance power, subject to reasonable constraints, that the stakeholder group believes would be beneficial for commercial and industrial CID property owners.

The staff recommends that the substance of Sections 1357.100(a) and 1357.110 be included in the proposed law. However, in light of the Commission’s prior decision to maximize parallelism of language and structure between this proposed law and the proposed recodification of the Davis-Stirling Act that is

currently pending before the Legislature, the staff recommends that **the Commission do so by paralleling the language and organization used in the recodification recommendation, rather than making the revision proposed by the stakeholder group.**

The Commission could do so by adding the following article to ~~proposed~~ Chapter 3 (commencing with Section 6600) of the proposed law:

Article 5. Operating Rules

§ 6630. “Operating rule”

6630. For the purposes of this article, “operating rule” means a regulation adopted by the board that applies generally to the management and operation of the common interest development or the conduct of the business and affairs of the association.

Comment. Section 6630 continues former Section 1357.100(a) without change.

See also Sections 6528 (association), 6534 (common interest development).

§ 6632. Validity and enforceability of operating rule

6632. An operating rule is valid and enforceable only if all of the following requirements are satisfied:

- (a) The rule is in writing.
- (b) The rule is within the authority of the board conferred by law or by the declaration, articles of incorporation or association, or bylaws of the association.
- (c) The rule is not inconsistent with governing law and the declaration, articles of incorporation or association, and bylaws of the association.
- (d) The rule is adopted, amended, or repealed in good faith and in substantial compliance with the requirements of this article.
- (e) The rule is reasonable.

Comment. Section 6632 continues former Section 1357.110 (a)-(c) and (e) without change, except as indicated below.

The following nonsubstantive change was made:

- The term “board of directors of the association” was replaced with the defined term “board.” See Section 6530 (“board”).

See also Sections 6528 (“association”), 6546 (“declaration”), 6630 (“operating rule”).

The Commission should also consider whether to delete the last clause of proposed Section 6632(d), as “this article” would not include any procedural requirements for adopting, amending, or repealing a rule.

Finally, the stakeholder group has recommended that the term “operating rule” be stricken from proposed Sections 6552 (definition of “governing documents”) and 6600 (hierarchy of governing document authority), because “the definition is not in this Act.” See Exhibit pp. 15, 19.

If the Commission decides to include the operating rule provisions in the proposed law as recommended above, then there would be a definition of “operating rule” in the Act. In that case, there would seem to be no reason to delete the term from Sections 6552 and 6600.

However, even if the Commission decides not to include the operating rule provisions in the proposed law as recommended above, the staff is not convinced that the term “operating rule” should be purged from the proposed law. The definition of “governing documents” clearly contemplates that an association may adopt operating rules outside of its declaration, articles, or by-laws, and Section 6600 would make clear that those rules are subordinate to the other main types of governing documents. That would be beneficial guidance, even if there is no clear definition of the term.

The staff recommends against deleting the term “operating rule” from Sections 6552 and 6600.

LEVYING OF ASSESSMENTS

Proposed Section 6800, continuing language from existing Section 1366(a) verbatim, provides:

6800. The association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this act.

The stakeholder group suggests that the section be made permissive:

6800. The association ~~shall~~ may levy regular and special assessments ~~sufficient to perform its obligations under~~ in accordance with the governing documents and this act.

Exhibit p. 45.

In effect, the stakeholder group is asking for commercial and residential CIDs to be exempted from an existing mandatory duty (with a permissive authorization added in its place).

When the staff met with the stakeholder group, the group explained the purpose of the proposed change. The group believes that business property

owners need greater flexibility in determining when to levy assessments to cover known future costs. In some cases it might make sense to impose regular assessments and set aside reserves. In other cases, it might make sense to wait until the costs arrive and use one-time special assessments to levy the necessary funds. However, the staff pointed out that nothing in Section 6800 specifies the manner in which assessments are levied. The section would seem to allow for the type of flexibility that the stakeholders believe is important for business operations.

In addition, in the staff's view, Section 6800 is foundational rather than operational. It establishes the basic duty of the association to levy assessments for necessary common costs, and of the owners to pay those assessments — a fundamental characteristic of the common interest development ownership form. The section does not specify any procedure or set any schedule for the levy of assessments. Therefore the staff believes that inclusion of the section in the proposed law is consistent with the policy principles underlying this study.

The staff recommends that **Section 6800 remain in the proposed law.**

LIMITATION OF DIRECTOR AND OFFICER LIABILITY

Existing Section 1365.7 limits the tort liability of a volunteer officer or director of a CID association for acts performed in the scope of the officer's or director's duties, provided that the association maintains a specified amount of insurance coverage.

By its terms, the section only applies in a CID that is "exclusively residential." Thus, it does not apply to a commercial or industrial CID. For that reason, it is not included in the proposed law.

The stakeholder group requests that the provision be included in the proposed law and made applicable to commercial and industrial CIDs. Exhibit p. 54.

Section 1365.7 (with its express limitation to "exclusively residential" CIDs), was added to the Davis-Stirling Act in 1988, in the same legislative session in which Section 1373 was enacted. See 1988 Cal. Stat. ch. 123, ch. 1188. It seems very likely that the Legislature's decision to limit Section 1365.7 to residential CIDs was a considered and intentional one.

The point of this study is to extrapolate from and more fully implement prior legislative policy choices relating to the treatment of commercial and industrial

CIDs. The change to Section 1365.7 that is proposed by the stakeholder group would instead reverse an express legislative policy choice. The staff sees no way to reconcile such a proposal with the policy direction of this study.

The staff recommends that **the requested change not be made.**

Respectfully submitted,

Steve Cohen
Staff Counsel

EMAIL FROM DUNCAN MCPHERSON
(APRIL 14, 2011)

Steve, Jeff Wagner and Pete Saputo and I have drafted proposed changes to the CLRC staff draft for a Commercial and Industrial CID Act based on the input of the non-residential working group and those proposed changes are contained in the attached pdf of the CLRC staff draft with the proposed changes shown as inserts or deletions from the CLRC draft (courtesy of Pete Saputo's technical abilities). We wanted you to have these proposed changes in sufficient time prior to our April 20th meeting so that you have the time to digest the suggested changes. Some of the changes also would apply to the Residential CID proposal and we will be sending those along separately.

In making these changes our idea is to make the non-residential law as flexible as possible for the many types of developments that will be using the law. In reviewing the many types of developments that would be subject to a non-residential act we concluded that the old "commercial and industrial" label is too narrow and that it would be better to use the term "non-residential" for in common use many of the possible uses of the act do not seem to fit under the "commercial and industrial" label. We also have proposed making the non-residential act as bare bones as possible in terms of operating provisions so that it is as short as possible and relatively easy to read. In this regard we have suggested eliminating provisions such as the construction defect provisions which while potentially usable in our experience are not used in commercial projects. This eliminates a great deal of complex and lengthy language.

We also concluded that in order to make the residential and non-residential acts work together one act must be the default act into which any CID falls if it is not subject to the other act. We originally started trying to define "residential" with the idea of saying that any CID which was not "residential" was subject to the non-residential act. Strangely we found we had more problems in defining residential and distinguishing residential from commercial residential developments such as apartments, than we had defining what we felt should fall into the non-residential category. We also had problems in dealing with "mother-in-law" units and duplexes and triplexes. As a result the proposal contains a definition of what we consider to be non-residential developments with every other CID falling into the residential category and being subject to the residential act.

We are also hopeful that the splitting up of the two types of developments may go a long way to dealing with the mixed use issues and perhaps will allow us not to have to propose separate legislation for mixed use developments.

I am also going to send to Brian Hebert Pete Saputo's mark up of the current residential legislation showing technical changes we would propose to accommodate the non-residential act and to correct technical issues such as the use of "member" instead of "owner" that we noted while working through the non-residential proposal.

Duncan

Duncan R. McPherson
Neumiller & Beardslee

CALIFORNIA LAW REVISION COMMISSION

There are many different types of common interest developments which are not residential and which should be governed by this act. However, they are not merely commercial and industrial. Please see proposed revisions to 6531. The title of the act should be changed throughout the act..

TENTATIVE RECOMMENDATION

Non-residential

~~Commercial and Industrial~~
Common Interest Developments

February 2011

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission may consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **April 28, 2011**.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739
650-494-1335
<commission@clrc.ca.gov>

COMMERCIAL AND INDUSTRIAL COMMON INTEREST DEVELOPMENTS

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PROPOSED LEGISLATION

See preceding page

Non-residential

1 **Civ. Code § 1373 (amended). ~~Commercial or industrial~~ common interest development**

2 SECTION 1. Section 1373 of the Civil Code is amended to read:

3 1373. (a) This title does not apply to a ~~commercial or industrial~~ common interest
4 development, as defined in Section 6531.

5 **Comment.** Section 1373 is amended to make the provisions of the Davis-Stirling Common
6 Interest Development Act inapplicable to an exclusively commercial or industrial common
7 interest development, as defined in Section 6531. Many provisions of that act are continued and
8 made applicable to exclusively commercial or industrial common interest developments by the
9 Commercial and Industrial Common Interest Development Act, Part 5.5 (commencing with
10 Section 6500) of Division 4. To determine whether that act continues a particular provision of the
11 Davis-Stirling Common Interest Development Act, see *Commercial and Industrial Common*
12 *Interest Developments*, __ Cal. L. Revision Comm'n Reports __ (201__).

Non-residential

13 **Civ. Code §§ 6500-6876 (added). ~~Commercial and industrial~~ common interest developments**

14 SEC. __. Part 5.5 (commencing with Section 6500) is added to Division 4 of
15 the Civil Code to read:

16 **Note.** Each of the provisions below has a parenthetical description following the section
17 number in its heading. The descriptions have the following meanings:

18 **(UNCHANGED).** A section with this description would continue existing law almost
19 verbatim, to the extent that existing law presently applies to an exclusively commercial or
20 industrial common interest development. Minor technical changes might be made to (1) correct a
21 cross-reference to reflect the new number of the referenced provision, (2) add or modify
22 subdivision or paragraph designators (e.g., unnumbered paragraphs might be designated as
23 subdivisions), or (3) conform to technical stylistic conventions (e.g., to avoid use of the word
24 “such” or the phrase “he or she”). If any of these changes are made, they will be clearly identified
25 in the Comment following the section.

26 **(REVISED).** A section with this description would continue or restate existing law verbatim to
27 the extent that existing law presently applies to an exclusively commercial or industrial common
28 interest development, except as specifically indicated in the Comment and “Note” that follow the
29 section. Changes made to a “(REVISED)” section may include the rewording of ambiguous or
30 confusing language or minor substantive improvements to existing law. Any such changes will be
31 expressly identified.

32 **(NEW).** A section with this description would be largely new. A boxed “Note” following the
33 Comment will explain the purpose of the new section.

PART 5.5. COMMERCIAL
AND INDUSTRIAL COMMON INTEREST
DEVELOPMENTS

CHAPTER 1. GENERAL PROVISIONS

Article 1. Preliminary Provisions

A more appropriate title is "Non-Residential"

§ 6500 (NEW). Short title

6500. This part shall be known and may be cited as the ~~Commercial and Industrial~~ Common Interest Development Act. In a provision of this part, the part may be referred to as the act.

Comment. Section 6500 is new.

Common interest developments in general are governed by the Davis-Stirling Common Interest Development Act. See Sections 1350-1378. However, common interest developments that are exclusively commercial or industrial were exempted from the provisions of that act by 2011 Cal. Stat. ch. _____. See Section 1373.

This part (Sections 6500-6876) was added to establish a separate body of law, largely based on provisions of the Davis-Stirling Common Interest Development Act, that would apply to and govern exclusively commercial or industrial common interest developments.

The Comments to the sections of this act identify sections of the Davis-Stirling Common Interest Development Act that are sources of the provisions of this act, and describe how each provision in this act compares with its source.

Note. Proposed Section 6500 would provide a short title for this part, to distinguish it from the Davis-Stirling Common Interest Development Act. It would also provide for simplified reference to the part as a whole.

§ 6502 (REVISED). Effect of headings

6502. Division, part, title, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of this act.

Comment. With respect to a commercial or industrial common interest development, Section 6502 continues Section 1350.5 without change, except as indicated below.

The following nonsubstantive changes were made:

- “Article” has been added to the list of headings.
- The last word of the sentence is replaced with “act.”

Section 6502 is a standard provision found in many codes. See, e.g., Evid. Code § 5; Fam. Code § 5; Prob. Code § 4.

For further information, see Section 6500 Comment.

Note. Proposed Section 6502 would add “article” to the list of headings in existing Section 1350.5. The omission of articles from that list appears to have been inadvertent.

§ 6505 (NEW). Application of act

6505. Nothing in the act that added this part shall be construed to invalidate a document prepared or action taken before January 1, 2014, if the document or


any provision in any governing

provision

1 action was proper under the law governing common interest developments at the
2 time that the document was prepared or the action was taken.

3 **Comment.** Section 6505 is new. It makes clear that any changes to former law made by
4 enactment of this act shall not be construed to retroactively invalidate documents prepared or
5 actions taken prior to the operative date of the act.

6 See also Section 6534 (“common interest development”).

7  **Note.** Proposed Section 6505 would make clear that any changes to former law made by
8 enactment of this act are not intended to retroactively invalidate documents prepared or actions
9 taken prior to the operative date of the act.

10 **§ 6510 (REVISED). Construction of zoning ordinance**

11 6510. Unless a contrary intent is clearly expressed, a local zoning ordinance is
12 construed to treat like structures, lots, parcels, areas, or spaces in like manner
13 regardless of the form of the common interest development.

14 **Comment.** With respect to a commercial or industrial common interest development, Section
15 6510 continues Section 1372 without change, except as indicated below.

16 The following nonsubstantive change was made:

- 17 • A list of all of the types of common interest developments has been replaced with general
18 language.

19 For further information, see Section 6500 Comment.

20 See also Section 6534 (“common interest development”).

Should the term "express mail"
be in the Act?

21 **§ 6512 (NEW). Delivered to an association**

22 6512. (a) If a provision of this act requires that a document be delivered to an
23 association, the document shall be delivered to the president or secretary of the
24 association.

25 (b) A document delivered pursuant to this section may be delivered by any of
26 the following methods:


27 (1) First-class mail, postage prepaid, registered or certified mail, express mail, or
28 overnight delivery by an express service carrier.

29 (2) By e-mail, facsimile, or other electronic means, if the association has
30 assented to that method of delivery.

31 (3) By personal delivery, if the association has assented to that method of
32 delivery. If the association accepts a document by personal delivery it shall
33 provide a written receipt acknowledging delivery of the document.

34 **Comment.** Section 6512 is new. It provides a standard rule for delivery of a document to the
35 association.

36 See also Section 6528 (“association”).

37  **Note.** Proposed Section 6512 is new. It would provide a clear rule for official communication
38 with the association.

1 **§ 6514 (NEW). Individual notice**

2 6514. (a) If a provision of this act requires that an association deliver a
3 document by “individual delivery” or “individual notice,” the document shall be
4 delivered to the member to be notified by one of the following methods:

5 (1) First-class mail, postage prepaid, registered or certified mail, express mail, or
6 overnight delivery by an express service carrier. The document shall be addressed
7 to the recipient at the address last shown on the books of the association.

8 (2) E-mail, facsimile, or other electronic means, if the recipient has consented, in
9 writing, to that method of delivery. The consent may be revoked, in writing, by the
10 recipient.

11 (b) For the purposes of this section, an unrecorded provision of the governing
12 documents providing for a particular method of delivery does not constitute
13 agreement by a member to that method of delivery.

14 **Comment.** Section 6514 is new. It specifies acceptable methods for delivery of a notice to an
15 individual member, as distinguished from a notice that is to be delivered to every member. See
16 Section 6516 (general notice). The methods listed in subdivision (a) are drawn from Section
17 1350.7(b)(2)-(3).

18 Subdivision (b) is drawn from Section 1350.7(d). It precludes use of electronic delivery
19 methods when the recipient has not consented to use of those methods or has withdrawn such
20 consent.

21 See also Sections 6528 (“association”), 6552 (“governing documents”), 6554 (“member”).

22 **Note.** Proposed Section 6514 is new. It is drawn from and generalizes much of the substance
23 of existing Section 1350.7.

24 **§ 6516 (NEW). General notice**

25 6516. (a) If a provision of this act requires “general delivery” or “general
26 notice,” the document shall be provided by one or more of the following methods:

27 (1) Any method provided for delivery of an individual notice pursuant to Section
28 6514.

29 (2) Inclusion in a billing statement, newsletter, or other document that is
30 delivered by one of the methods provided in this section.

31 (3) Posting the printed document in a prominent location that is accessible to all
32 members, if the location has been designated for the posting of general notices by
33 the association.

34 (4) ~~If the association broadcasts television programming for the purpose of~~
35 ~~distributing information on association business to its members, by inclusion in the~~
36 ~~programming.~~

37 (b) ~~Notwithstanding subdivision (a), if a member requests to receive general~~
38 ~~notices by individual delivery, all general notices to that member, given under this~~
39 ~~section, shall be delivered pursuant to Section 6514.~~

40 **Comment.** Section 6516 is new. It specifies acceptable methods for delivery of a notice to the
41 membership generally, as distinguished from a notice that is to be delivered to a specific member.
42 See Section 6514 (individual notice). Nothing in this section prevents an association from using
43 supplemental notice methods, such as posting on an Internet website, so long as one or more
44 methods authorized by this section are also used.

This seems to be an inappropriate form of
notice for a non-residential association.
What about websites or webcasts, etc?

Subdivision (b) reserves the right of any member, on request, to receive general notices by the delivery methods provided for delivery of an individual notice. Thus, in an association that posts general notices on a notice board in a prominent location pursuant to subdivision (a)(3), individual members would still have the right, on request, to receive those notices by mail.

See also Sections 6528 (“association”), 6554 (“member”).

Note. Proposed Section 6516 is new. It would enhance efficiency by allowing an association to “broadcast” notices of general interest, while reserving the right of individual members to receive those notices as individual notices on request.

§ 6518 (NEW). Time and proof of delivery

6518. (a) This section governs the delivery of a document pursuant to this act.

(b) If a document is delivered by mail, delivery is deemed to be complete on deposit into the United States mail.

(c) If a document is delivered by electronic means, delivery is complete at the time of transmission.

Comment. Section 6518 is new. Subdivision (b) is drawn from the second sentence of Section 1350.7(b)(2).

Subdivision (c) is drawn from the second sentence of Section 1350.7(b)(3).

Note. Proposed Section 6518 is new. It would generalize the timing rules provided in existing Section 1350.7, so that they would apply to any notice delivered by the specified methods. This will provide greater certainty in resolving timing disputes.

total

§ 6522 (NEW). Approved by majority of all members

6522. If a provision of this act requires that an action be approved by a majority of all members, the action shall be approved or ratified by ~~an affirmative vote of a majority of the votes entitled to be cast.~~

Comment. Section 6522 is new. It is added for drafting convenience. This section only governs an election conducted pursuant to a provision of this act (i.e., the Commercial and Industrial Common Interest Development Act). An election that is not required by this act would be governed by the association’s governing documents.

See also Section 6554 (“member”).

Note. Proposed Section 6522 is new. It would add guidance on the procedure for approval of a proposed action that must be approved “by a majority of all members.”

§ 6524 (NEW). Approved by majority of quorum of members

6524. If a provision of this act requires that an action be approved by a majority of a quorum of the members, the action shall be approved or ratified by an affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present, which affirmative votes also constitute a majority of the required quorum.

Comment. Section 6524 is new. It is added for drafting convenience. This section only governs an election conducted pursuant to a provision of this act (i.e., the Commercial and Industrial Common Interest Development Act). An election that is not required by this act would be governed by the association’s governing documents.

See also Section 6554 (“member”).

"affirmative vote" can be interpreted to modify "majority" rather than "votes entitled to be cast" causing an ambiguity

are considered common area for purposes of subdivision (b) of Section 6562

(b) ~~Notwithstanding subdivision (a), in a planned development described in subdivision (b) of Section 6562, the common area may consist of mutual or reciprocal easement rights appurtenant to the separate interests.~~

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6532 continues the first two sentences of Section 1351(b) without change.

With respect to a commercial or industrial common interest development, subdivision (b) continues the substance of the third sentence of Section 1351(b), but restates it for clarity.

For further information, see Section 6500 Comment.

See also Sections 6534 (“common interest development”), 6562 (“planned development”), 6564 (“separate interest”).

Note. Proposed Section 6532(b) would restate the third sentence of existing Section 1351(b), to improve its clarity without changing its meaning.

§ 6534 (UNCHANGED). “Common interest development”

6534. “Common interest development” means any of the following **or a combination thereof.**

~~(a) A community apartment project.~~

(b) A condominium project.

(c) A planned development.

~~(d) A stock cooperative.~~

A community apartment project is by definition residential. Stock cooperatives are used for residential development only. These terms should not be in the non-residential act.

Comment. With respect to a commercial or industrial common interest development, Section 6534 continues Section 1351(c) without change.

For further information, see Section 6500 Comment.

See also Sections 6536 (“community apartment project”), 6542 (“condominium project”), 6562 (“planned development”), 6566 (“stock cooperative”).

§ 6536 (UNCHANGED). ~~“Community apartment project”~~

~~6536. “Community apartment project” means a development in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon. [to be deleted per Duncan's letter of April 7, 2010]~~

Comment. With respect to a commercial or industrial common interest development, Section 6536 continues Section 1351(d) without change.

For further information, see Section 6500 Comment.

Note. The Commission invites comment on whether an exclusively commercial or industrial common interest development may be organized as a community apartment project.

§ 6540 (NEW). “Condominium plan”

6540. “Condominium plan” means a plan described in Section 6624.

Comment. Section 6540 is new. It is included for drafting convenience.

Note. Proposed Section 6540 is added for drafting convenience.

§ 6542 (REVISED). “Condominium project”

6542. (a) A “condominium project” means a real property development consisting of condominiums.

[The addition of “or a combination thereof” is being suggested for it is common now that CID’s be a combination of a planned development and condominium projects.]

(b) A condominium consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, water, or fixtures, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. The description of the unit may refer to (1) boundaries described in the recorded final map, parcel map, or condominium plan, (2) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (3) an entire structure containing one or more units, or (4) any combination thereof.

(c) The portion or portions of the real property held in undivided interest may be all of the real property, except for the separate interests, or may include a particular three-dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, water, or fixtures, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support.

(d) An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property.

Comment. With respect to a commercial or industrial common interest development, Section 6542 continues Section 1351(f) without change, except as indicated below.

The following nonsubstantive changes were made:

- The section has been organized into subdivisions for ease of reference.
- In subdivision (a), a reference to a “development” is revised to refer to a “real property development.”
- Subdivisions (b) and (c) make clear that the contents of the area within the boundaries of a condominium may include “fixtures.”

For further information, see Section 6500 Comment.

See also Sections 6540 (“condominium plan”), 6564 (“separate interest”).

§ 6544 (UNCHANGED). “Declarant”

6544. “Declarant” means the person or group of persons designated in the declaration as declarant, or if no declarant is designated, the person or group of persons who sign the original declaration or who succeed to special rights, preferences, or privileges designated in the declaration as belonging to the signator of the original declaration.

Comment. With respect to a commercial or industrial common interest development, Section 6544 continues Section 1351(g) without change.

For further information, see Section 6500 Comment.

See also Sections 6546 (“declaration”), 6560 (“person”).

EX 13

§ 6546 (REVISED). “Declaration”

a recorded document which establishes equitable servitudes that governs the operation of a common interest development

6546. “Declaration” means ~~the document, however denominated, that contains the information required by Section 6614.~~

[The changes suggested are intended to eliminate tying the very nature of a declaration to the information referenced in Sections 6614. There are older pre-Act declarations which may not contain all of the required information or others which do not contain the required information by mistake. The group does not feel that it makes sense to have a definition which might be construed to place a development outside the Act due to the omission of a required item in the declaration.]

Comment. With respect to a commercial or industrial common interest development, Section 6546 continues Section 1351(h) without change, except as indicated below.

The following nonsubstantive changes were made:

- The word “which” has been replaced with “that.”
- The cross-reference has been updated to reflect the new location of the referenced provision.


For further information, see Section 6500 Comment.

§ 6548 (NEW). “Director”

6548. “Director” means a natural person who serves on the board.

Comment. Section 6548 is new. It is added for drafting convenience.

See also Section 6530 (“board”).

 **Note.** Proposed Section 6548 is added for drafting convenience.

§ 6550 (REVISED). “Exclusive use common area”

6550. (a) “Exclusive use common area” means a portion of the common area designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests.

(b) Unless the declaration otherwise provides, any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes, and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common area allocated exclusively to that separate interest.

(c) ~~Notwithstanding the provisions of the declaration, internal and external telephone wiring designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common area allocated exclusively to that separate interest.~~ **Redraft or eliminate: too limited in scope**

Comment. With respect to a commercial or industrial common interest development, Section 6550 continues Section 1351(i) without change, except as indicated below.

The following nonsubstantive change was made:

- Several references to “common areas” are singularized.


For further information, see Section 6500 Comment.

See also Sections 6532 (“common area”), 6546 (“declaration”), 6564 (“separate interest”).

§ 6551 (NEW). “General notice”

6551. “General notice” means the delivery of a document pursuant to Section 6516.

Comment. Section 6551 is new. It is added for drafting convenience.

 **Note.** Proposed Section 6551 is added for drafting convenience.

[Depending on the project additional governing document might include master CC&Rs, senior ground leases and REAs. The Declaration should have the power to identify the governing documents]

The definition is not in this act. This term should be eliminated

1 § 6552 (REVISED). “Governing documents”

designated by the Declaration

2 6552. “Governing documents” means the declaration and any other documents,
3 such as bylaws, ~~operating rules~~, articles of incorporation, or articles of association,
4 which govern the operation of the common interest development or association.

5 **Comment.** With respect to a commercial or industrial common interest development, Section
6 6552 continues Section 1351(j) without change, except as indicated below.

7 The following nonsubstantive change was made: **, except as otherwise provided in the declaration,**

- 8 • The superfluous words “of the association” have not been continued.

9 For further information, see Section 6500 Comment.

10 See also Sections 6528 (“association”), 6534 (“common interest development”), 6546
11 (“declaration”).

12 § 6553 (NEW). “Individual notice”

13 6553. “Individual notice” means the delivery of a document pursuant to Section
14 6514.

15 **Comment.** Section 6553 is new. It is added for drafting convenience.

16 **Note.** Proposed Section 6553 is added for drafting convenience.

17 § 6554 (NEW). “Member”

a member of the association

18 6554. “Member” means ~~an owner of a separate interest~~.

[without this change, the term member is identical to the term "owner".]

19 **Comment.** Section 6554 is new. It is added for drafting convenience.

20 See also Section 6564 (“separate interest”).

21 **Note.** Proposed Section 6554 is added for drafting convenience.

22 6555. “Owner” means an owner of a separate interest.

23 § 6560 (NEW). “Person”

24 6560. “Person” means a natural person, corporation, government or
25 governmental subdivision or agency, business trust, estate, trust, partnership,
26 limited liability company, association, or other entity.

Comment. Section 6560 is new. It is added for drafting convenience.

27 **Note.** Proposed Section 6560 is new. It reflects the standard statutory definition of “person”
28 as including both natural persons and legal entities. See, e.g., Prob. Code § 56.

some or all of and has the power to collect assessments and impose liens upon the separate interests

29 § 6562 (REVISED). “Planned development”

30 6562. “Planned development” means a real property development (other than a
31 community apartment project, a condominium project, or a stock cooperative)
32 having either or both of the following features:

33 (a) Common area that is owned either by an association or in common by the
34 owners of the separate interests who possess appurtenant rights to the beneficial
35 use and enjoyment of the common area.

36 (b) Common area and an association that maintains the common area ~~with the~~
37 ~~power to levy assessments that may become a lien upon the separate interests in~~
38 accordance with Article 2 (commencing with Section 6808) of Chapter 6. **EX 15**

Notwithstanding (b) a real property development which has no common area other than mutual or reciprocal easements appurtenant to the separate interests is not a planned development regardless of whether there are lien rights unless the declaration contains an election that the development be considered a planned development.

Comment. With respect to a commercial or industrial common interest development, Section 6562 continues the substance of Section 1351(k), except as indicated below.

The following nonsubstantive changes were made:

- In the introductory clause, the term “development” has been revised to read “real property development.”
- Subdivision (a) has been restated for clarity.
- Subdivision (b) has been restated for clarity and to update a cross-reference.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6536 (“community apartment project”), 6542 (“condominium project”), 6564 (“separate interest”), 6566 (“stock cooperative”).

Note. Proposed Section 6562(b) replaces the existing reference in Section 1351(k) to “Section 1367 or 1367.1” with a reference to “Article 2 (commencing with Section 6808) of Chapter 6.” That reference encompasses all of the provisions of Sections 1367 and 1367.1 that this act makes applicable to an exclusively commercial or industrial common interest development under which an “assessment ... may become a lien.”

§ 6564 (REVISED). “Separate interest”

6564. (a) “Separate interest” has the following meanings:

~~(1) In a community apartment project, “separate interest” means the exclusive right to occupy an apartment, as specified in Section 6536.~~

(2) In a condominium project, “separate interest” means a separately owned unit, as specified in Section 6542.

(3) In a planned development, “separate interest” means a separately owned lot, parcel, area, or space.

~~(4) In a stock cooperative, “separate interest” means the exclusive right to occupy a portion of the real property, as specified in Section 6566.~~

(b) Unless the declaration or condominium plan, if any exists, otherwise provides, if walls, floors, or ceilings are designated as boundaries of a separate interest, the interior surfaces of the perimeter walls, floors, ceilings, windows, doors, and outlets located within the separate interest are part of the separate interest and any other portions of the walls, floors, or ceilings are part of the common area.

(c) The estate in a separate interest may be a fee, a life estate, an estate for years, or any combination of the foregoing.

Comment. With respect to a commercial or industrial common interest development, Section 6564 continues Section 1351(l) without change, except as indicated below.

The following nonsubstantive changes were made:

- In subdivision (a)(2), the term “individual unit” is replaced with “separately owned unit.”
- The last two unnumbered paragraphs of former Section 1351(l) are designated as subdivisions (b) and (c).
- Cross-references are updated to reflect the new location of referenced provisions.
- A reference to “common areas” is singularized.

For further information, see Section 6500 Comment.

See also Sections 6532 (“common area”), 6536 (“community apartment project”), 6540 (“condominium plan”), 6542 (“condominium project”), 6546 (“declaration”), 6562 (“planned development”), 6566 (“stock cooperative”).

A community apartment project is by definition residential. Stock cooperatives are used for residential development only. These terms should not be in the non-residential act.

Please delete throughout the act

~~§ 6566 (UNCHANGED). “Stock cooperative”~~

~~6566. “Stock cooperative” means a development in which a corporation is formed or availed of, primarily for the purpose of holding title to, either in fee simple or for a term of years, improved real property, and all or substantially all of the shareholders of the corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation. The owners’ interest in the corporation, whether evidenced by a share of stock, a certificate of membership, or otherwise, shall be deemed to be an interest in a common interest development and a real estate development for purposes of subdivision (f) of Section 25100 of the Corporations Code.~~

[A deed of trust or mortgage which utilizes a legal description which refers to one or more or all of the separate interests should not be an act that creates a common interest development. Mere financing transactions should not commence the need to prepare budgets, reserve studies, and otherwise comply with the duties of the act. Rather, it is the true conveyance to an owner that should commence operations]

CHAPTER 2. APPLICATION OF ACT

§ 6580 (REVISED). Creation of common interest development

6580. Subject to Section 6582, this act applies and a common interest development is created whenever a separate interest coupled with an interest in the common area or membership in the association is, or has been, conveyed, provided all of the following are recorded:

(a) A declaration.

(b) A condominium plan, if any exists.

(c) A final map or parcel map, if Division 2 (commencing with Section 66410) of Title 7 of the Government Code requires the recording of either a final map or parcel map for the common interest development.

Comment. With respect to a commercial or industrial common interest development, Section 6580 continues Section 1352 without change, except as indicated below.

The following nonsubstantive changes were made:

- The term “title” is replaced with “act.”
- A cross-reference is added to refer to Section 6582.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest development”), 6540 (“condominium plan”), 6546 (“declaration”), 6564 (“separate interest”).

§ 6582 (REVISED). Application of act

non-residential

6582. (a) This act applies only to a ~~commercial or industrial~~ common interest development.

(b) Nothing in this act may be construed to apply to a real property development that does not contain common area. This subdivision is declaratory of existing law.

Comment. Subdivision (a) of Section 6582 is consistent with Section 1373 as that section provided prior to the enactment of 2012 Cal. Stat. ch. ____, except that the act that added this section makes the following provisions of the Davis-Stirling Common Interest Development Act inapplicable to a commercial or industrial common interest development: Section 1350.7, the second paragraph of Section 1351(d), the provisions of Section 1353 that require notice if a development is within an airport influence area or within the jurisdiction of the San Francisco Bay Conservation and Development Commission, Section 1353.7, a portion of Section 1355(b), a portion of Section 1357(b)-(c), Sections 1363(d), (e), (f), (h), and (i), Section 1363.03, Section 1363.04, Section 1363.05, Section 1363.07, Section 1363.09, Section 1363.1, Sections 1363.810 through 1363.850, Section 1363.2, Section 1365.1, Section 1365.2, Section 1365.2.5, Section 1365.7, the last two sentences of Section 1366(a), Section 1366(d), Section 1366(e), Section 1366.2, Section 1367.1(c), Section 1367.1(n), Section 1367.4, Section 1367.5, Section 1367.6, and Sections 1369.510 through 1369.590.

A common interest development is created as provided in Section 6580.

With respect to a commercial or industrial common interest development, subdivision (b) continues Section 1374 without change, except as indicated below.

The following nonsubstantive changes were made:

- The term “title” is replaced with “act.”
- The phrase “wherein there does not exist” has been restated for clarity.

For further information, see Section 6500 Comment.

See also Sections 6532 (“common area”), 6534 (“common interest development”).

Note. This proposed legislation is intended to apply only to a CID that is exclusively commercial or industrial (i.e., that does not contain any residential separate interests). Mixed use developments would continue to be governed by the existing Davis-Stirling act. That rule is

shall include provisions in compliance with Corporations Code Section 7130 and may include any other provisions permitted by Sections 7131 and 7132 of the Corporations Code which are not inconsistent with the declaration and in the event of any inconsistency the declaration shall control.

CHAPTER 3. GOVERNING DOCUMENTS

conflict with Article 1. General Provisions

§ 6600 (NEW). Document authority

6600. (a) ~~The governing documents may not include a provision that is inconsistent with the law. To the extent of any inconsistency between the governing documents and the law, the law controls.~~

(b) ~~The articles of incorporation may not include a provision that is inconsistent with the declaration. To the extent of any inconsistency between the articles of incorporation and the declaration, the declaration controls.~~

(c) The bylaws may not include a provision that is inconsistent with the declaration or the articles of incorporation. To the extent of any inconsistency between the bylaws and the articles of incorporation or declaration, the articles of incorporation or declaration control.

[As drafted, (b) seems to permit an association to modify its articles by simply adopting an amendment to the CC&Rs. For example, the CC&Rs could change the name of the Association, change the classes of members and otherwise ignore the Articles. Is this a wise decision?]

The definition is not in this act. This term should be eliminated

~~(d) The operating rules may not include a provision that is inconsistent with the declaration, articles of incorporation, or bylaws. To the extent of any inconsistency between the operating rules and the bylaws, articles of incorporation, or declaration, the bylaws, articles of incorporation, or declaration control.~~

Comment. Subdivisions (a) and (b) of Section 6600 are new.

Subdivision (c) is consistent with Corporations Code Section 7151(c) providing that the bylaws shall be consistent with the articles of incorporation.

Subdivision (d) is drawn from Section 1357.110 providing that an operating rule may not be inconsistent with the declaration, articles of incorporation, or bylaws of the association.

See also Sections 6546 (“declaration”), 6552 (“governing documents”).

Note. Proposed Section 6600 is new. Subdivision (a) would make clear that an association’s governing documents are subordinate to the law and are not enforceable to the extent they are contradicted by the law. Subdivisions (b), (c), and (d) would provide guidance in resolving conflicts between different governing documents.

§ 6602 (REVISED). Liberal construction of instruments

6602. Any deed, declaration, or condominium plan for a common interest development shall be liberally construed to facilitate the operation of the common interest development, and its provisions shall be presumed to be independent and severable. Nothing in Article 3 (commencing with Section 715) of Chapter 2 of Title 2 of Part 1 of Division 2 shall operate to invalidate any provisions of the governing documents.

Comment. With respect to a commercial or industrial common interest development, Section 6602 continues Section 1370 without change, except as indicated below.

The following nonsubstantive changes were made:

- “This division” has been replaced with “Division 2.”
- The phrase “of a common interest development” has not been continued.

For further information, see Section 6500 Comment.

See also Sections 6534 (“common interest development”), 6540 (“condominium plan”), 6546 (“declaration”), 6552 (“governing documents”).

§ 6604 (UNCHANGED). Boundaries of units

6604. In interpreting deeds and condominium plans, the existing physical boundaries of a unit in a condominium project, when the boundaries of the unit are contained within a building, or of a unit reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed or condominium plan, if any exists, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or in the deed and those of the building.

Comment. With respect to a commercial or industrial common interest development, Section 6604 continues Section 1371 without change.

For further information, see Section 6500 Comment.

See also Sections 6540 (“condominium plan”), 6542 (“condominium project”).

Note. The Commission has received comment suggesting that Section 1371 is inadequate to address some situations. The Commission invites further comment on this issue and particularly invites specific suggestions for how the language of proposed Section 6604 should be changed to address any problems with the scope of the section.

~~§ 6606 (REVISED). Deletion of unlawful restrictive covenants~~

~~6606. (a) No declaration or other governing document shall include a restrictive covenant in violation of Section 12955 of the Government Code.~~

~~(b) Notwithstanding any other provision of law or provision of the governing documents, the board, without approval of the members, shall amend any declaration or other governing document that includes a restrictive covenant prohibited by this section to delete the restrictive covenant, and shall restate the declaration or other governing document without the restrictive covenant but with no other change to the declaration or governing document.~~

~~(c) If the declaration is amended under this section, the board shall record the restated declaration in each county in which the common interest development is located. If the articles of incorporation are amended under this section, the board shall file a certificate of amendment with the Secretary of State pursuant to Section 7814 of the Corporations Code.~~

~~(d) If after providing written notice to an association, pursuant to Section 6512, requesting that the association delete a restrictive covenant that violates subdivision (a), and the association fails to delete the restrictive covenant within 30 days of receiving the notice, the Department of Fair Employment and Housing, a city or county in which a common interest development is located, or any person may bring an action against the association for injunctive relief to enforce subdivision (a). The court may award attorney's fees to the prevailing party.~~

Comment. With respect to a commercial or industrial common interest development, Section 6606 continues Section 1352.5 without change, except as indicated below.

The following nonsubstantive changes were made:

- Subdivision (b) is revised to replace the term “board of directors of an association” with the defined term “board.” See Section 6530 (“board” defined).
- Subdivision (b) is revised to replace “owners” with “members.” See Section 6554 (“member” defined).
- Subdivision (c) is added.
- Subdivision (d) is revised to include a reference to the provision governing notice to an association (Section 6512).

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6530 (“board”), 6534 (“common interest development”), 6546 (“declaration”), 6552 (“governing documents”), 6560 (“person”).

Note. Proposed Section 6606(c) is added to require that a governing document that is in the public record be publicly updated to reflect an amendment made pursuant to this section.

~~§ 6608 (REVISED). Deletion of declarant provisions in governing documents~~

~~6608. (a) Notwithstanding any provision of the governing documents to the contrary, the board may, after the developer has completed construction of the~~

1 ~~development, has terminated construction activities, and has terminated marketing~~
2 ~~activities for the sale, lease, or other disposition of separate interests within the~~
3 ~~development, adopt an amendment deleting from any of the governing documents~~
4 ~~any provision which is unequivocally designed and intended, or which by its~~
5 ~~nature can only have been designed or intended, to facilitate the developer in~~
6 ~~completing the construction or marketing of the development. However,~~
7 ~~provisions of the governing documents relative to a particular construction or~~
8 ~~marketing phase of the development may not be deleted under the authorization of~~
9 ~~this subdivision until that construction or marketing phase has been completed.~~

10 ~~(b) The provisions which may be deleted by action of the board shall be limited~~
11 ~~to those which provide for access by the developer over or across the common~~
12 ~~area for the purposes of (1) completion of construction of the development, and (2)~~
13 ~~the erection, construction, or maintenance of structures or other facilities designed~~
14 ~~to facilitate the completion of construction or marketing of separate interests.~~

15 ~~(c) At least 30 days prior to taking action pursuant to subdivision (a), the board~~
16 ~~shall deliver to all members, by individual delivery pursuant to Section 6514, (1) a~~
17 ~~copy of all amendments to the governing documents proposed to be adopted under~~
18 ~~subdivision (a), and (2) a notice of the time, date, and place the board will consider~~
19 ~~adoption of the amendments. The board may consider adoption of amendments to~~
20 ~~the governing documents pursuant to subdivision (a) only at a meeting that is open~~
21 ~~to all members, who shall be given opportunity to make comments thereon. All~~
22 ~~deliberations of the board on any action proposed under subdivision (a) shall only~~
23 ~~be conducted in an open meeting.~~

24 ~~(d) The board may not amend the governing documents pursuant to this section~~
25 ~~without the approval of a majority of a quorum of the members, pursuant to~~
26 ~~Section 6524. For the purposes of this section, “quorum” means more than 50~~
27 ~~percent of the members who own no more than two separate interests in the~~
28 ~~development.~~

29 **Comment.** With respect to a commercial or industrial common interest development, Section
30 6608 continues Section 1355.5 without change, except as indicated below.

31 The following substantive change was made:

- 32 • Subdivision (c) is revised to provide for individual delivery of the specified notice. See
33 Section 6514.

34 The following nonsubstantive changes were made:

- 35 • The phrase “his or her” is not continued in subdivision (a).
36 • The phrase “of a common interest development” has not been continued in subdivision
37 (a).
38 • The terms “board of directors” and “board of directors of the association” are replaced
39 throughout with the defined term “board.” See Section 6530 (“board” defined).
40 • Subdivision (b) has been revised to use numerals to number the listed items, rather than
41 letters.
42 • Subdivisions (c) and (d) are revised to use the defined term “member.” See Section 6554
43 (“member” defined).
44 • Subdivision (c) is revised to delete the unnecessary word “such.”
45 • Subdivision (c) is revised to replace “which” with “that.”

- Subdivision (d) is revised to use the standard term “approval of a majority of a quorum of the members.” See Section 6524.

For further information, see Section 6500 Comment.

See also Sections 6530 (“board”), 6532 (“common area”), 6552 (“governing documents”), 6564 (“separate interest”).

§ 6610 (NEW). Correction of statutory cross-reference

substantially

6610. (a) Notwithstanding any other provision of law or provision of the governing documents, if the governing documents include a reference to a provision of the Davis Stirling Common Interest Development Act that was continued in a new provision by the act that added this section, the board may amend the governing documents, solely to correct the cross-reference, by adopting a board resolution that shows the correction.

(b) A declaration that is corrected under this section may be restated in corrected form and recorded, provided that a copy of the board resolution authorizing the corrections is recorded along with the restated declaration.

Comment. Section 6610 is new. It is intended to provide a simplified method to correct statutory cross-references in an association’s governing documents that are required as a result of the enactment of the act that added this section. No other amendment can be made under this section.

See also Sections 6530 (“board”), 6552 (“governing documents”).

Note. Proposed Section 6610 is new. It would provide a simplified method to update statutory cross-references to reflect changes made by the proposed law. This would reduce the transitional complications resulting from the enactment of this act.

Article 2. Declaration

§ 6614 (REVISED). Content of declaration

6614. (a) A declaration, recorded on or after January 1, 1986, shall contain a legal description of the common interest development, and a statement that the common interest development is a ~~community apartment project~~, condominium project, planned development, ~~stock cooperative~~, or combination thereof. The declaration shall additionally set forth the name of the association and the restrictions on the use or enjoyment of any portion of the common interest development that are intended to be enforceable equitable servitudes.

(b) The declaration may contain any other matters the declarant or the members consider appropriate.

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6614 continues the first two sentences of Section 1353(a)(1) without change.

With respect to a commercial or industrial common interest development, subdivision (b) continues Section 1353(b) without change, except as indicated below.

The following nonsubstantive changes were made:

- The defined term “member” is used in place of “owner.” See Section 6554 (“member”).

The failure of a document to include the required provisions shall not constitute a determination that such document is not a declaration as defined in Section 6546.

- The defined term “declarant” is used in place of “original signator of the declaration.” See Section 6544 (“declarant”).

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6534 (“common interest development”), 6536 (“community apartment project”), 6542 (“condominium project”), 6546 (“declaration”), 6562 (“planned development”), 6566 (“stock cooperative”).

Note. Proposed Section 6614(b) would use the defined term “declarant” in place of “original signator of the declaration.” That would seem to be a slight substantive change, as the existing language could be read to apply only to the *original* declarant (as opposed to any successor declarant). However, the staff does not see any good policy reason to preclude a successor declarant, who may own a large percentage of the separate interests within a CID, from having a say as to what is appropriate for inclusion in the declaration. The Commission invites comment on whether the proposed change would cause any problems.

§ 6616 (REVISED). Amendment authorized

6616. Except to the extent that a declaration provides by its express terms that it is not amendable, in whole or in part, a declaration that fails to include provisions permitting its amendment at all times during its existence may be amended at any time **in accordance with Section 6620.**

Comment. With respect to a commercial or industrial common interest development, Section 6616 continues the first sentence of Section 1355(b) without change, except as indicated below.

The following nonsubstantive change was made:

- The term “which” is replaced with “that.”

For further information, see Section 6500 Comment.

See also Section 6546 (“declaration”).

Note. Proposed Section 6616 continues the authority to amend a declaration that is silent as to whether it may be amended, but does not continue the procedure specified for doing so. Instead, the amendment would be made using the general procedure for amending a declaration, which is provided in proposed Section 6620.

§ 6618 (REVISED). Amendment to extend term of declaration authorized

6618. (a) The Legislature finds that there are common interest developments that have been created with deed restrictions that do not provide a means for the members to extend the term of the declaration. The Legislature further finds that covenants and restrictions, contained in the declaration, are an appropriate method for protecting the common plan of developments and to provide for a mechanism for financial support for the upkeep of common area including, but not limited to, roofs, roads, heating systems, and recreational facilities. If declarations terminate prematurely, common interest developments may deteriorate and the supply of affordable units could be impacted adversely. The Legislature further finds and declares that it is in the public interest to provide a vehicle for extending the term of the declaration if the extension is approved by a majority of all members, pursuant to Section 6522.

(b) A declaration that specifies a termination date, but that contains no provision for extension of the termination date, may be extended, before its termination date, by the approval of members pursuant to Section 6620.

(c) No single extension of the terms of the declaration made pursuant to this section shall exceed the initial term of the declaration or 20 years, whichever is less. However, more than one extension may occur pursuant to this section.

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6618 continues Section 1357(a) without change, except as indicated below.

The following nonsubstantive changes were made:

- The defined term “member” is used. See Section 6554 (“member”).
- A reference to “common areas” is singularized.
- The term “which” is replaced with “that.”
- A reference to approval by “members having more than 50 percent of the votes in the association” is replaced with standard terminology.
- A reference to “housing” is deleted.

With respect to a commercial or industrial common interest development, subdivision (b) continues part of the substance of Section 1357(b), authorizing extension of the termination date of a declaration that does not provide for extension of the termination date, except as indicated below.

The following nonsubstantive change was made:

- Language has been added to make clear that the extension must occur before the termination date.

The procedure for extension of the termination date provided in Section 1357(b)-(c) is not continued. An extension would instead be made pursuant to the general procedure for amendment of a declaration. See Section 6620.

With respect to a commercial or industrial common interest development, subdivision (c) continues Section 1357(d) without change.

For further information, see Section 6500 Comment.

See also Sections 6532 (“common area”), 6534 (“common interest development”), 6546 (“declaration”), 6554 (“member”).

Note. Proposed Section 6618 continues the authority to amend a declaration to extend its term, but does not continue the procedure specified for doing so. Instead, the extension would be made using the general procedure for amending a declaration, which is provided in proposed Section 6620.

§ 6620 (REVISED). Amendment procedure

6620. (a) A declaration may be amended pursuant to the declaration or this act. An amendment is effective after all of the following requirements have been met:

(1) The proposed amendment has been delivered by individual notice to all members not less than 15 days and not more than 60 days prior to any approval being solicited.

(2) The amendment has been approved by the percentage of members required by the declaration and any other person whose approval is required by the declaration.

(3) That fact has been certified in a writing executed and acknowledged by the officer designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association.

(4) The amendment has been recorded in each county in which a portion of the common interest development is located. **vote or consent required to**

(b) If the declaration does not specify ~~the percentage of members who must~~ approve an amendment of the declaration, an amendment may be approved by a majority of all members, pursuant to Section 6522.

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6620 continues Section 1355(a) without change, except as indicated below.

The following substantive changes were made:

- A notice requirement drawn from Section 1355(b) is added.
- References to the "governing documents" have been replaced with references to the declaration.
- Paragraph (a)(2) is revised to recognize that a declaration may require that an amendment be approved of a non-member.

The following nonsubstantive changes were made:

- The first word is replaced with "a."
- The term "title" is replaced with "act."
- A reference to a statutory exception that is not continued in this act is deleted.
- The defined term "member" is used. See Section 6554 ("member" defined).
- The subdivision has been divided into paragraphs, with conforming technical adjustments to the language.

Subdivision (b) generalizes a rule stated in Sections 1355(b) and 1357.

For further information, see Section 6500 Comment.

See also Sections 6528 ("association"), 6534 ("common interest development"), 6546 ("declaration"), 6553 ("individual notice"), 6554 ("member").

Note. Proposed Section 6620(b) would provide a default rule on member approval of an amendment where the governing documents are silent on the matter. That rule is drawn from Sections 1355(b) and 1357.

Article 3. Articles of Incorporation

§ 6622 (REVISED). Content of articles

6622. (a) The articles of incorporation of an association filed with the Secretary of State on or after January 1, 1995, shall include a statement, which shall be in addition to the statement of purposes of the corporation, that does all of the following: **Non-residential**

(1) Identifies the corporation as an association formed to manage a common interest development under the ~~Commercial and Industrial~~ Common Interest Development Act.

(2) States the business or corporate office of the association, if any, and, if the office is not on the site of the common interest development, states the nine-digit

reference to the association's managing agent is probably

1 ZIP Code, front street, and nearest cross street for the physical location of the
2 common interest development.

3 ~~(3) States the name and address of the association's managing agent, if any.~~

4 (b) The statement of principal business activity contained in the annual
5 statement filed by an incorporated association with the Secretary of State pursuant
6 to Section 1502 of the Corporations Code shall also contain the statement
7 specified in subdivision (a).

8 **Comment.** With respect to a commercial or industrial common interest development, Section
9 6622 continues Section 1363.5 without change, except as indicated below.

10 The following substantive change was made:

- 11 • A reference to this act is substituted for a reference to the Davis Stirling Common Interest
12 Development Act.

13 The following nonsubstantive changes were made:

- 14 • A cross-reference to the definition of “managing agent” has not been continued.
15 • The term “common interest development association” is replaced with “association.”

16 For further information, see Section 6500 Comment.

17 See also Corp. Code §§ 1502 (annual statement), 7130-7135 (content of articles of
18 incorporation), 7810-7820 (amendment of articles of incorporation), 7150-7153 (content and
19 amendment of bylaws).

20 See also Sections 6528 (“association”), 6534 (“common interest development”).

21 Article 4. Condominium Plan

22 § 6624 (REVISED). “Condominium plan”

23 6624. A condominium plan shall contain all of the following:

24 (a) A description or survey map of a condominium project, which shall refer to
25 or show monumentation on the ground.

26 (b) A three-dimensional description of a condominium project, one or more
27 dimensions of which may extend for an indefinite distance upwards or
28 downwards, in sufficient detail to identify the common area and each separate
29 interest.

30 (c) A certificate consenting to the recordation of the condominium plan pursuant
31 to this act that is signed and acknowledged as provided in Section 6626.

32 **Comment.** With respect to a commercial or industrial common interest development, Section
33 6624 continues Section 1351(e)(1)-(2) and a part of Section 1351(e)(3) without change, except as
34 indicated below.

35 The following nonsubstantive changes were made:

- 36 • The enumerated items are set out as subdivisions.
37 • A reference to “this title” has been changed to “this act.”
38 • The list of persons who must sign and acknowledge the certificate consenting to
39 recordation of the condominium plan has been replaced with a reference to the section
40 governing the creation and recordation of a condominium plan.

41 For further information, see Section 6500 Comment.

42 See also Sections 6532 (“common area”), 6542 (“condominium project”), 6564 (“separate
43 interest”).

1 **§ 6626 (REVISED). Recordation of condominium plan**

2 6626. (a) The certificate consenting to the recordation of a condominium plan
3 that is required by subdivision (c) of Section 6624 shall be signed and
4 acknowledged by all of the following persons:

5 (1) The record owner of fee title to that property included in the condominium
6 project.

7 (2) In the case of a condominium project that will terminate upon the
8 termination of an estate for years, by all lessors and lessees of the estate for years.

9 (3) In the case of a condominium project subject to a life estate, by all life
10 tenants and remainder interests.

11 (4) The trustee or the beneficiary of each recorded deed of trust, and the
12 mortgagee of each recorded mortgage encumbering the property.

13 (b) Owners of mineral rights, easements, rights-of-way, and other nonpossessory
14 interests do not need to sign the certificate.

15 ~~(c) In the event a conversion to condominiums of a community apartment~~
16 ~~project or stock cooperative has been approved by the required number of owners,~~
17 ~~trustees, beneficiaries, and mortgagees pursuant to Section 66452.10 of the~~
18 ~~Government Code, the certificate need only be signed by those owners, trustees,~~
19 ~~beneficiaries, and mortgagees approving the conversion.~~

20 **Comment.** With respect to a commercial or industrial common interest development, Section
21 6626 continues the substance of Section 1351(e)(3), except as indicated below.

22 The following nonsubstantive changes were made:

- 23 • The last paragraph of Section 1351(e) is not continued in this section.
- 24 • A cross-reference to Section 6624(c) is added to the first paragraph.
- 25 • Subdivision (b) is revised to make clear that it states an exception to who must sign the
26 certificate of consent to recordation, rather than the condominium plan itself.

27 For further information, see Section 6500 Comment.

28 See also Sections 6536 (“community apartment project”), 6540 (“condominium plan”), 6542
29 (“condominium project”), 6560 (“person”), 6566 (“stock cooperative”).

30 **Note.** Proposed Section 6626 would restate the procedural provisions of existing Section
31 1351(e)(3). Doing so necessitates a number of minor nonsubstantive language revisions.

32 **§ 6628 (REVISED). Amendment or revocation of condominium plan**

EX 27

33 6628. A condominium plan may be amended or revoked by a recorded
34 instrument that is acknowledged and signed by all the persons who, at the time of
35 amendment or revocation, are persons whose signatures are required under Section
36 6626.

If an amendment to the condominium plan is for the purpose of transferring portions of a separate interest or interests to another separate interest or interests or in connection with the subdivision of a separate interest into two or more separate interests and modifying the common area resulting from the transfer or subdivision and the amendment is in compliance with any applicable requirements set forth in the declaration, the recorded document need only be acknowledged and signed by those persons whose signature would be required at the time of the amendment under Section 6626 if the condominium project consisted solely of the separate interests modified by the amendment. The board, without the approval of the members, may adopt an amendment to the declaration if the amendment to the condominium plan affects the voting or assessment allocations set forth in the declaration. If the declaration is amended under this section, the board shall record the amendment in each county in which the common interest development is located.

Note. Proposed Section 6628 is revised to make its meaning more clear, as described in the Comment following the section.

CHAPTER 4. OWNERSHIP AND TRANSFER OF INTERESTS

Article 1. Ownership Rights and Interests

§ 6650 (REVISED). Ownership of common area

6650. Unless the declaration otherwise provides, in a condominium project, or in a planned development in which the common area is owned by the owners of the separate interests, the common area is owned as tenants in common, in equal shares, one for each separate interest.

Comment. With respect to a commercial or industrial common interest development, Section 6650 continues Section 1362 without change, except as indicated below.

The following nonsubstantive changes were made:

- The references to “common areas” are singularized.
- The phrase “unit or lot” is replaced with the defined term “separate interest.”

For further information, see Section 6500 Comment.

See also Sections 6532 (“common area”), 6542 (“condominium project”), 6546 (“declaration”), 6562 (“planned development”), 6564 (“separate interest”).

§ 6652 (REVISED). Appurtenant rights and easements

6652. Unless the declaration otherwise provides:

(a) In a ~~community apartment project and~~ condominium project, and in those planned developments with common area owned in common by the owners of the separate interests, there are appurtenant to each separate interest nonexclusive rights of ingress, egress, and support, if necessary, through the common area. The common area is subject to these rights.

(b) In a ~~stock cooperative, and in a~~ planned development with common area owned by the association, there is an easement for ingress, egress, and support, if necessary, appurtenant to each separate interest. The common area is subject to these easements.

Comment. With respect to a commercial or industrial common interest development, Section 6652 continues Section 1361 without change, except as indicated below.

The following nonsubstantive change was made:

- The references to “common areas” are singularized.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6536 (“community apartment project”), 6542 (“condominium project”), 6546 (“declaration”), 6562 (“planned development”), 6564 (“separate interest”), 6566 (“stock cooperative”).

§ 6654 (REVISED). Access to separate interest property

6654. Except as otherwise provided in law, an order of the court, or an order pursuant to a final and binding arbitration decision, an association may not deny a

~~member~~ or occupant physical access to the ~~member's~~ or occupant's separate interest, either by restricting access through the common area to the separate interest, or by restricting access solely to the separate interest.

Comment. With respect to a commercial or industrial common interest development, Section 6654 continues Section 1361.5 without change, except as indicated below.

The following nonsubstantive changes were made:

- The phrase “his or her” has been replaced with “the member’s or occupant’s.”
- References to the “owner’s” separate interest have been revised to omit the word “owner’s.” This will help to avoid any implication that the reference does not also apply to an “occupant” of a separate interest.
- The defined term “member” is used in place of “owner” throughout. See Section 6554 (“member”).
- The references to “common areas” is singularized.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6564 (“separate interest”).

Note. Although it is clear that Section 1361.5 is intended to protect both owners and occupants of separate interests, that section twice refers to the “*owner’s* separate interest,” without any reference to an occupant. That could create the impression that the Legislature intended to draw some sort of distinction between owners and occupants, which the staff does not believe to be the case. Proposed Section 6654 would adjust the language of Section 1361.5 to avoid that implication. Note also that the defined term “member” is used in place of “owner” throughout.

Article 2. Restrictions on Transfers

§ 6656 (REVISED). Partition of condominium project

6656. (a) Except as provided in this section, the common area in a condominium project shall remain undivided, and there shall be no judicial partition thereof. Nothing in this section shall be deemed to prohibit partition of a cotenancy in a condominium.

(b) The owner of a separate interest in a condominium project may maintain a partition action as to the entire project as if the owners of all of the separate interests in the project were tenants in common in the entire project in the same proportion as their interests in the common area. The court shall order partition under this subdivision only by sale of the entire condominium project and only upon a showing of one of the following:

(1) More than three years before the filing of the action, the condominium project was damaged or destroyed, so that a material part was rendered unfit for its prior use, and the condominium project has not been rebuilt or repaired substantially to its state prior to the damage or destruction.

(2) Three-fourths or more of the project is destroyed or substantially damaged and owners of separate interests holding in the aggregate more than a 50-percent interest in the common area oppose repair or restoration of the project.

(3) The project has been in existence more than 50 years, is obsolete and uneconomic, and owners of separate interests holding in the aggregate more than a 50-percent interest in the common area oppose repair or restoration of the project.

(4) Any conditions in the declaration for sale under the circumstances described in this subdivision have been met.

Comment. With respect to a commercial or industrial common interest development, Section 6656 continues Section 1359 without change, except as indicated below.

The following nonsubstantive changes were made:

- References to “common areas” are singularized.
- Subdivision (b)(4) is rephrased to avoid use of “such.”

For further information, see Section 6500 Comment.

See also Sections 6532 (“common area”), 6542 (“condominium project”), 6546 (“declaration”), 6564 (“separate interest”).

Note. Proposed Section 6656(b)(4) would rephrase Section 1359(b)(4) to avoid use of the word “such,” which is strongly disfavored in statutory drafting. The Commission invites comment on whether the rephrasing would cause any substantive change in the meaning of the provision.

§ 6658 (REVISED). Lien for work performed in condominium project

6658. (a) In a condominium project, no labor performed or services or materials furnished with the consent of, or at the request of, an owner in the condominium project or the owners’ agent or contractor shall be the basis for the filing of a lien against any other property of any other owner in the condominium project unless that other owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services. However, express consent shall be deemed to have been given by the owner of any condominium in the case of emergency repairs thereto.

(b) Labor performed or services or materials furnished for the common area, if duly authorized by the association, shall be deemed to be performed or furnished with the express consent of each condominium owner.

(c) The owner of any condominium may remove that owner’s condominium from a lien against two or more condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by the lien that is attributable to the owner’s condominium.

Comment. With respect to a commercial or industrial common interest development, Section 6658 continues Section 1369 without change, except as indicated below.

The following nonsubstantive changes were made:

- Subdivisions are added.
- The phrase “his or her” is replaced with references to the “owner” throughout.
- A reference to “common areas” is singularized.
- The word “which” is replaced with “that” in subdivision (c).

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6542 (“condominium project”).

Does 6658 mesh with current mechanic's lien law? Is this statute clear that work on common area cannot result in a lien on units?

Article 3. Transfer of Separate Interest

~~§ 6660 (UNCHANGED). Community apartment project~~

~~6660. In a community apartment project, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the community apartment project. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also includes the owner's membership interest in the association.~~

Comment. With respect to a commercial or industrial common interest development, Section 6660 continues Section 1358(a) without change.

For further information, see Section 6500 Comment.

See also Sections 6528 ("association"), 6536 ("community apartment project"), 6564 ("separate interest").

Note. The Commission invites comment on whether an exclusively commercial or industrial common interest development may be organized as a community apartment project, or whether this provision is unnecessary.

§ 6662 (REVISED). Condominium project

6662. In a condominium project the common area is not subject to partition, except as provided in Section 6656. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the common area. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also includes the owner's membership interest in the association.

Comment. With respect to a commercial or industrial common interest development, Section 6662 continues Section 1358(b) without change, except as indicated below.

The following nonsubstantive changes were made:

- A cross-reference is updated to reflect the new location of the referenced provision.
- References to "common areas" are singularized.

For further information, see Section 6500 Comment.

See also Sections 6528 ("association"), 6532 ("common area"), 6542 ("condominium project"), 6564 ("separate interest").

§ 6664 (REVISED). Planned development

6664. In a planned development, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the common area, if any exists. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also includes the owner's membership interest in the association.

Comment. With respect to a commercial or industrial common interest development, Section 6664 continues Section 1358(c) without change, except as indicated below.

The following nonsubstantive change was made:

- A reference to "common areas" is singularized.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6562 (“planned development”), 6564 (“separate interest”).

~~§ 6666 (UNCHANGED). Stock cooperative~~

~~6666. In a stock cooperative, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the ownership interest in the corporation, however evidenced. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner’s entire estate also includes the owner’s membership interest in the association.~~

Comment. With respect to a commercial or industrial common interest development, Section 6666 continues Section 1358(d) without change.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6564 (“separate interest”), 6566 (“stock cooperative”).

Note. The Commission invites comment on whether an exclusively commercial or industrial common interest development may be organized as a stock cooperative, or whether this provision is unnecessary.

§ 6668 (REVISED). Transfer of exclusive use common area

6668. Nothing in this article prohibits the transfer of exclusive use areas, independent of any other interest in a common interest subdivision, if authorization to separately transfer exclusive use areas is expressly stated in the declaration and the transfer occurs in accordance with the terms of the declaration.

Comment. With respect to a commercial or industrial common interest development, Section 6668 continues the next to last paragraph of Section 1358 without change, except as indicated below.

The following nonsubstantive change was made:

- The term “section” is replaced with “article.”

For further information, see Section 6500 Comment.

See also Section 6546 (“declaration”).

§ 6670 (REVISED). Severability of interests

6670. Any restrictions upon the severability of the component interests in real property which are contained in the declaration shall not be deemed conditions repugnant to the interest created within the meaning of Section 711. However, these restrictions shall not extend beyond the period in which the right to partition a project is suspended under Section 6656.

Comment. With respect to a commercial or industrial common interest development, Section 6670 continues the last paragraph of Section 1358 without change, except as indicated below.

The following nonsubstantive changes were made:

- A superfluous reference to the “Civil Code” is omitted.
- The cross-reference is updated to reflect the new location of the referenced provision.

For further information, see Section 6500 Comment.

See also Section 6546 (“declaration”).

CHAPTER 4. PROPERTY USE AND MAINTENANCE

Article 1. Use of Separate Interest

§ 6700 (NEW). Application of article

6700. This article includes provisions that limit the authority of an association or the governing documents to regulate the use of ~~a member's~~ separate interest. Nothing in this article is intended to affect the application of any other provision that limits the authority of an association to regulate the use of ~~a member's~~ separate interest, including, but not limited to, the following provisions:

- (a) Sections 712 and 713, relating to the display of signs.
- (b) Sections 714 and 714.1, relating to solar energy systems.
- (c) Section 714.5, relating to structures that are constructed offsite and moved to the property in sections or modules.
- (d) Sections 782, 782.5, and 6150 of this code and Section 12956.1 of the Government Code, relating to racial restrictions.

Comment. Section 6700 is new. It provides a non-exclusive list of provisions outside of this act that limit the authority of an association to regulate separate interest property use.

See also Sections 6528 (“association”), 6552 (“governing documents”), 6554 (“member”), 6564 (“separate interest”).

Note. Proposed Section 6700 is new. It introduces the article and lists other provisions that protect separate interest use rights.

§ 6702 (REVISED). Display of U.S. flag

6702. (a) Except as required for the protection of the public health or safety, no declaration or other governing document shall limit or prohibit, or be construed to limit or prohibit, the display of the flag of the United States by ~~a member~~ on or in the ~~member's~~ separate interest or within the ~~member's~~ exclusive use common area.

(b) For purposes of this section, “display of the flag of the United States” means a flag of the United States made of fabric, cloth, or paper displayed from a staff or pole or in a window, and does not mean a depiction or emblem of the flag of the United States made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.

(c) In any action to enforce this section, the prevailing party shall be awarded reasonable attorney’s fees and costs.

Comment. With respect to a commercial or industrial common interest development, Section 6702 continues Section 1353.5 without change, except as indicated below.

The following nonsubstantive changes were made:

- A superfluous cross-reference to governing definitions is omitted.
- The defined term “member” is used in place of “owner.” See Section 6554 (“member”).

For further information, see Section 6500 Comment.

See also Sections 6532 (“common area”), 6546 (“declaration”), 6550 (“exclusive use common area”), 6552 (“governing documents”), 6564 (“separate interest”).

1 **§ 6704 (REVISED). Noncommercial sign**

2 ~~6704. (a) The governing documents may not prohibit posting or displaying of~~
3 ~~noncommercial signs, posters, flags, or banners on or in a member's separate~~
4 ~~interest, except as required for the protection of public health or safety or if the~~
5 ~~posting or display would violate a local, state, or federal law.~~

6 ~~(b) For purposes of this section, a noncommercial sign, poster, flag, or banner~~
7 ~~may be made of paper, cardboard, cloth, plastic, or fabric, and may be posted or~~
8 ~~displayed from the yard, window, door, balcony, or outside wall of the separate~~
9 ~~interest, but may not be made of lights, roofing, siding, paving materials, flora, or~~
10 ~~balloons, or any other similar building, landscaping, or decorative component, or~~
11 ~~include the painting of architectural surfaces.~~

12 ~~(c) An association may prohibit noncommercial signs and posters that are more~~
13 ~~than nine square feet in size and noncommercial flags or banners that are more~~
14 ~~than 15 square feet in size.~~

15 **Comment.** With respect to a commercial or industrial common interest development, Section
16 6704 continues Section 1353.6 without change, except as indicated below.

17 The following nonsubstantive changes were made:

- 18 • The redundant phrase “including the operating rules” is not continued.
- 19 • The defined term “member” is used in place of “owner.” See Section 6554 (“member”).
- 20 • In subdivision (c), the numeral “9” was replaced with “nine” for stylistic reasons.

21 For further information, see Section 6500 Comment.

22 See also Sections 6528 (“association”), 6552 (“governing documents”), 6564 (“separate
23 interest”).

24 **§ 6706 (REVISED). Pets**

25 ~~6706. (a) No governing documents shall prohibit the owner of a separate interest~~
26 ~~within a common interest development from keeping at least one pet within the~~
27 ~~common interest development, subject to reasonable rules and regulations of the~~
28 ~~association. This section may not be construed to affect any other rights provided~~
29 ~~by law to an owner of a separate interest to keep a pet within the development.~~

30 ~~(b) For purposes of this section, “pet” means any domesticated bird, cat, dog,~~
31 ~~aquatic animal kept within an aquarium, or other animal as agreed to between the~~
32 ~~association and the owner.~~

33 ~~(c) If the association implements a rule or regulation restricting the number of~~
34 ~~pets an owner may keep, the new rule or regulation shall not apply to prohibit an~~
35 ~~owner from continuing to keep any pet that the owner currently keeps in the~~
36 ~~owner's separate interest if the pet otherwise conforms with the previous rules or~~
37 ~~regulations relating to pets.~~

38 ~~(d) For the purposes of this section, “governing documents” shall include, but~~
39 ~~are not limited to, the conditions, covenants, and restrictions of the common~~
40 ~~interest development, and the bylaws, rules, and regulations of the association.~~

41 ~~(e) This section shall become operative on January 1, 2001, and shall only apply~~
42 ~~to governing documents entered into, amended, or otherwise modified on or after~~
43 ~~that date.~~

1 **Comment.** With respect to a commercial or industrial common interest development, Section
2 6704 continues Section 1360.5 without change, except as indicated below.

3 The following nonsubstantive changes were made:

- 4 • A reference to “homeowner” has been replaced with “owner” in subdivision (b).
- 5 • The words “his or her” have been replaced with “the owner’s” in subdivision (c).

6 For further information, see Section 6500 Comment.

7 See also Sections 6528 (“association”), 6534 (“common interest development”), 6552
8 (“governing documents”), 6564 (“separate interest”).

9 **~~§ 6708 (REVISED). Television antenna or satellite dish~~**

10 ~~6708. (a) Any covenant, condition, or restriction contained in any deed, contract,~~
11 ~~security instrument, or other instrument affecting the transfer or sale of, or any~~
12 ~~interest in, a common interest development that effectively prohibits or restricts~~
13 ~~the installation or use of a video or television antenna, including a satellite dish, or~~
14 ~~that effectively prohibits or restricts the attachment of that antenna to a structure~~
15 ~~within that development where the antenna is not visible from any street or~~
16 ~~common area, except as otherwise prohibited or restricted by law, is void and~~
17 ~~unenforceable as to its application to the installation or use of a video or television~~
18 ~~antenna that has a diameter or diagonal measurement of 36 inches or less.~~

19 ~~(b) This section shall not apply to any covenant, condition, or restriction, as~~
20 ~~described in subdivision (a), that imposes reasonable restrictions on the~~
21 ~~installation or use of a video or television antenna, including a satellite dish, that~~
22 ~~has a diameter or diagonal measurement of 36 inches or less. For purposes of this~~
23 ~~section, “reasonable restrictions” means those restrictions that do not significantly~~
24 ~~increase the cost of the video or television antenna system, including all related~~
25 ~~equipment, or significantly decrease its efficiency or performance and include all~~
26 ~~of the following:~~

27 ~~(1) Requirements for application and notice to the association prior to the~~
28 ~~installation.~~

29 ~~(2) Requirement of a member to obtain the approval of the association for the~~
30 ~~installation of a video or television antenna that has a diameter or diagonal~~
31 ~~measurement of 36 inches or less on a separate interest owned by another.~~

32 ~~(3) Provision for the maintenance, repair, or replacement of roofs or other~~
33 ~~building components.~~

34 ~~(4) Requirements for installers of a video or television antenna to indemnify or~~
35 ~~reimburse the association or its members for loss or damage caused by the~~
36 ~~installation, maintenance, or use of a video or television antenna that has a~~
37 ~~diameter or diagonal measurement of 36 inches or less.~~

38 ~~(c) Whenever approval is required for the installation or use of a video or~~
39 ~~television antenna, including a satellite dish, the application for approval shall be~~
40 ~~processed by the appropriate approving entity for the common interest~~
41 ~~development in the same manner as an application for approval of an architectural~~
42 ~~modification to the property, and the issuance of a decision on the application shall~~
43 ~~not be willfully delayed.~~

~~(d) In any action to enforce compliance with this section, the prevailing party shall be awarded reasonable attorney's fees.~~

Comment. With respect to a commercial or industrial common interest development, Section 6708 continues Section 1376 without change, except as indicated below.

The following nonsubstantive change was made:

- The defined term “member” is used in place of “owner.” See Section 6554 (“member”).

For further information, see Section 6500 Comment.

See also 47 C.F.R. § 1.4000.

See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest development”), 6564 (“separate interest”).

Note: In prior comments, it has been suggested that existing Section 1376 is largely preempted by the FCC regulation cited in the Comment above and should not be continued. See Memorandum 2008-43, p. 43. The staff requests public comment on the merits of that suggestion.

§ 6710 (REVISED). Marketing restriction

6710. (a) Any provision of a governing document that arbitrarily or unreasonably restricts an owner's ability to market the owner's interest in a common interest development is void.

(b) No association may adopt, enforce, or otherwise impose any governing document that does either of the following:

(1) Imposes an assessment or fee in connection with the marketing of an owner's interest in an amount that exceeds the association's actual or direct costs.

(2) Establishes an exclusive relationship with a real estate broker through which the sale or marketing of interests in the development is required to occur. The limitation set forth in this paragraph does not apply to the sale or marketing of separate interests owned by the association or to the sale or marketing of common area by the association.

(c) For purposes of this section, “market” and “marketing” mean listing, advertising, or obtaining or providing access to show the owner's interest in the development.

(d) This section does not apply to rules or regulations made pursuant to Section 712 or 713 regarding real estate signs.

Comment. With respect to a commercial or industrial common interest development, Section 6710 continues Section 1368.1 without change, except as indicated below.

The following substantive changes were made:

- The introductory clause is revised to make clear that a void provision does not void the entire governing document that contains it.
- The phrase “rule or regulation” is replaced with “governing document.” This broadens the application of the section so that it governs any provision in the governing documents and not just an operating rule.

The following nonsubstantive changes were made:

- The phrase “his or her” is replaced with “the owner's” in subdivision (a).
- A reference to “common areas” is singularized.
- The superfluous words “of an association” are omitted.
- A reference to a statutory limitation set forth in Section 1366.1, a provision that is not continued in this act, is deleted.

For further information, see Section 6500 Comment.
See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest development”), 6552 (“governing documents”), 6564 (“separate interest”).

Note. Proposed Section 6710 would apply to any governing document, and not just to a “rule or regulation” (which is unclear and may only encompass an operating rule).

§ 6712 (REVISED). Low water-using plants

6712. (a) Notwithstanding any other law, a provision of the governing documents shall be void and unenforceable if it does any of the following:

(1) Prohibits, or includes conditions that have the effect of prohibiting, the use of low water-using plants as a group.

(2) Has the effect of prohibiting or restricting compliance with either of the following:

(A) A water-efficient landscape ordinance adopted or in effect pursuant to subdivision (c) of Section 65595 of the Government Code.

(B) Any regulation or restriction on the use of water adopted pursuant to Section 353 or 375 of the Water Code.

(b) This section shall not prohibit an association from applying landscaping rules established in the governing documents, to the extent the rules fully conform with the requirements of subdivision (a).

Comment. With respect to a commercial or industrial common interest development, Section 6712 continues Section 1353.8 without change, except as indicated below.

The following nonsubstantive change was made:

- Surplus language is not continued (i.e., the phrases “of any,” “of a common interest development,” and “and regulations”). The term “governing documents” includes all governing documents of a common interest development. See Section 6552 (“governing documents”).

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6552 (“governing documents”).

Article 2. Modification of Separate Interest

§ 6714 (REVISED). Improvements to separate interest

6714. (a) Subject to the governing documents and applicable law, a member may do the following:

(1) Make any improvement or alteration within the boundaries of the member's separate interest that does not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.

(2) Modify the member's separate interest, at the member's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the separate interest for the purposes of this paragraph if the separate

an owner

owner's

owner

1 interest is on the ground floor or already accessible by an existing ramp or
2 elevator. The right granted by this paragraph is subject to the following conditions:

3 (A) The modifications shall be consistent with applicable building code
4 requirements.

5 (B) The modifications shall be consistent with the intent of otherwise applicable
6 provisions of the governing documents pertaining to safety or aesthetics.

7 (C) Modifications ~~external to the dwelling~~ shall not prevent reasonable passage
8 by other residents, and shall be removed by the ~~member~~ when the separate interest
9 is no longer occupied by persons requiring those modifications who are blind,
10 visually handicapped, deaf, or physically disabled.

11 (D) Any ~~member~~ who intends to modify a separate interest pursuant to this
12 paragraph shall submit plans and specifications to the association for review to
13 determine whether the modifications will comply with the provisions of this
14 paragraph. The association shall not deny approval of the proposed modifications
15 under this paragraph without good cause.

16 (b) Any change in the exterior appearance of a separate interest shall be in
17 accordance with the governing documents and applicable provisions of law.

18 **Comment.** With respect to a commercial or industrial common interest development, Section
19 6714 continues Section 1360 without change, except as indicated below.

20 The following substantive change was made:

- 21 • The scope of the provision is broadened to apply to any separate interest, and not just a
22 unit in a condominium project.

23 The following nonsubstantive changes were made:

- 24 • The phrase “his or her” is not continued in subdivision (a)(2)(D).
25 • The defined term “member” is used in place of “owner” throughout. See Section 6554
26 (“member” defined).

27 For further information, see Section 6500 Comment.

28 See also Sections 6528 (“association”), 6534 (“common interest development”), 6552
29 (“governing documents”), 6564 (“separate interest”).

30 **Note.** Proposed Section 6714 would broaden the scope of Section 1360 to include all CIDs,
31 and not just condominiums. References to “units” are replaced with references to “separate
32 interests.” References to condominium associations are changed to refer to associations generally.

33 Article 3. Maintenance

34 § 6716 (REVISED). Maintenance responsibility generally

35 6716. (a) Unless otherwise provided in the declaration of a common interest
36 development, the association is responsible for repairing, replacing, or maintaining
37 the common area, other than exclusive use common area, and the owner of each
38 separate interest is responsible for maintaining that separate interest and any
39 exclusive use common area appurtenant to the separate interest.

(b) The costs of temporary relocation during the repair and maintenance of the areas within the responsibility of the association shall be borne by the owner of the separate interest affected.

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6716 continues Section 1364(a) without change, except as indicated below.

The following nonsubstantive change was made:

- References to “common areas” are singularized.

With respect to a commercial or industrial common interest development, subdivision (b) continues Section 1364(c) without change.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest development”), 6546 (“declaration”), 6550 (“exclusive use common area”), 6564 (“separate interest”).

§ 6718 (REVISED). ~~Wood-destroying pests or organisms~~

~~6718. (a) In a community apartment project, condominium project, or stock cooperative, unless otherwise provided in the declaration, the association is responsible for the repair and maintenance of the common area occasioned by the presence of wood-destroying pests or organisms.~~

~~(b) In a planned development, unless a different maintenance scheme is provided in the declaration, each owner of a separate interest is responsible for the repair and maintenance of that separate interest as may be occasioned by the presence of wood-destroying pests or organisms. Upon approval of the majority of all members of the association, pursuant to Section 6522, that responsibility may be delegated to the association, which shall be entitled to recover the cost thereof as a special assessment.~~

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6718 continues Section 1364(b)(1) without change, except as indicated below.

The following nonsubstantive change was made:

- A superfluous cross-reference to governing definitions has not been continued.

With respect to a commercial or industrial common interest development, subdivision (b) continues Section 1364(b)(2) without change, except as indicated below.

The following nonsubstantive changes were made:

- A superfluous cross-reference to a governing definition has not been continued.
- A cross-reference to Section 6522 is added.
- The last sentence is revised to avoid use of the word “such.”

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6536 (“community apartment project”), 6542 (“condominium project”), 6546 (“declaration”), 6554 (“member”), 6562 (“planned development”), 6564 (“separate interest”), 6566 (“stock cooperative”).

Note. The last sentence of Section 1364(b)(2) has been restated, in proposed Section 6718(b), to avoid use of the word “such.” Standard legislative drafting practice is to avoid the use of “such” as a shorthand reference for a previously described thing.

1 **§ 6720 (REVISED). Temporary removal of occupant to perform treatment of wood-**
2 **destroying pests**

3 6720. (a) The association may cause the temporary, summary removal of any
4 occupant of a common interest development for such periods and at such times as
5 may be necessary for prompt, effective treatment of wood-destroying pests or
6 organisms.

7 (b) The association shall give notice of the need to temporarily vacate a separate
8 interest to the occupants and to the owners, not less than 15 days nor more than 30
9 days prior to the date of the temporary relocation. The notice shall state the reason
10 for the temporary relocation, the date and time of the beginning of treatment, the
11 anticipated date and time of termination of treatment, and that the occupants will
12 be responsible for their own accommodations during the temporary relocation.

13 (c) Notice by the association shall be deemed complete upon either:

14 (1) Personal delivery of a copy of the notice to the occupants, and if an occupant
15 is not the owner, individual delivery pursuant to Section 6514, of a copy of the
16 notice to the owner.

17 (2) Individual delivery pursuant to Section 6514 to the occupant at the address
18 of the separate interest, and if the occupant is not the owner, individual delivery
19 pursuant to Section 6514, of a copy of the notice to the owner.

20 (d) For purposes of this section, “occupant” means an owner, ~~resident,~~ guest,
21 invitee, tenant, lessee, sublessee, or other person in possession on the separate
22 interest.

23 **Comment.** With respect to a commercial or industrial common interest development, Section
24 6720 continues Section 1364(d)-(e) without change, except as indicated below.

25 The following substantive change was made:

- 26 • The provision is revised to incorporate the “individual delivery” notice procedure.

27 The following nonsubstantive change was made:

- 28 • Subdivision (c) is revised to improve its clarity.

29 For further information, see Section 6500 Comment.

30 See also Sections 6528 (“association”), 6534 (“common interest development”), 6564
31 (“separate interest”).

32 **Note.** Proposed Section 6720(c) is revised to improve its clarity and to incorporate the
33 “individual delivery” notice procedure.

34 ~~**§ 6722 (REVISED). Exclusive use communication wiring**~~

35 ~~6722. Notwithstanding the provisions of the declaration, a member is entitled to~~
36 ~~reasonable access to the common area for the purpose of maintaining the internal~~
37 ~~and external telephone wiring made part of the exclusive use common area of the~~
38 ~~member’s separate interest pursuant to subdivision (c) of Section 6550. The access~~
39 ~~shall be subject to the consent of the association, whose approval shall not be~~
40 ~~unreasonably withheld, and which may include the association’s approval of~~
41 ~~telephone wiring upon the exterior of the common area, and other conditions as~~
42 ~~the association determines reasonable.~~

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6722 continues Section 1364(f) without change, except as indicated below.

The following nonsubstantive changes were made:

- A cross-reference is updated to reflect the new location of the referenced provision.
- The defined term “member” is used in place of “owner.” See Section 6554 (“member”).
- References to “common areas” are singularized.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6546 (“declaration”), 6550 (“exclusive use common area”), 6564 (“separate interest”).

CHAPTER 5. ASSOCIATION GOVERNANCE

Article 1. Association Existence and Powers

§ 6750 (REVISED). Association

6750. A common interest development shall be managed by an association that may be incorporated or unincorporated. The association may be referred to as an owners’ association or a community association.

Comment. With respect to a commercial or industrial common interest development, Section 6750 continues Section 1363(a) without change, except as indicated below.

The following nonsubstantive changes were made:

- Use of the term “owners’ association” to describe the association is expressly authorized.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6534 (“common interest development”).

§ 6752 (REVISED). Association powers

6752. (a) Unless the governing documents provide otherwise, and regardless of whether the association is incorporated or unincorporated, the association may exercise the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code, except that an unincorporated association may not adopt or use a corporate seal or issue membership certificates in accordance with Section 7313 of the Corporations Code.

(b) The association, whether incorporated or unincorporated, may exercise the powers granted to an association in this act.

Comment. With respect to a commercial or industrial common interest development, Section 6752 continues former Section 1363(c) without change, except as indicated below.

The following nonsubstantive changes were made:

- Subdivisions are added.
- The term “title” is replaced with “act.”

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6552 (“governing documents”).

(c) The Board may adopt and enforce reasonable written operating rules that apply generally to the management and operation of the common interest development or the conduct of the business and affairs of the association. An operating rule is unenforceable to the extent it is inconsistent with governing law or the governing documents.

Article 2. Record Keeping

§ 6756 (NEW). Mailing-related requests

6756. To be effective, any of the following requests shall be delivered in writing to the association, pursuant to Section 6512:

(a) A request to change the member's information in the association membership list.

(b) A request to add or remove a second address for delivery of documents to the member pursuant to Section 6814.

(c) A request for individual delivery of general notices to the member, pursuant to subdivision (b) of Section 6516, or a request to cancel a prior request for individual delivery of general notices.

Comment. Section 6756 is new. It requires that the specified requests be written and delivered to the association pursuant to Section 6512.

See also Sections 6528 ("association"), 6554 ("member").

Note. Proposed Section 6756 would require that certain mailing-related requests be submitted in writing, by the method specified for delivery of notices to the association..

Article 3. Conflict of Interest

§ 6758 (REVISED). Interested director

6758. (a) Notwithstanding any other law, and regardless of whether an association is incorporated or unincorporated, the provisions of Sections 7223 and 7224 of the Corporations Code shall apply to any contract or other transaction authorized, approved, or ratified by the board or a committee of the board.

(b) A director or member of a committee shall not vote on any of the following matters:

(1) Discipline of the director or committee member.

(2) An assessment against the director or committee member for damage to the common area or facilities.

(3) A request, by the director or committee member, for a payment plan for overdue assessments.

(4) A decision whether to foreclose on a lien on the separate interest of the director or committee member.

(5) Review of a proposed physical change to the separate interest of the director or committee member.

(6) A grant of exclusive use common area to the director or committee member.

(c) Nothing in this section limits any other provision of law or the governing documents that governs a decision in which a director may have an interest.

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6758 continues the substance of Section 1365.6, except as indicated below.

The following nonsubstantive change was made:

- The reference to Corporations Code Section 310, which governs the General Corporation Law, has been replaced with a reference to Corporations Code Sections 7233 and 7234, which state equivalent rules for nonprofit mutual benefit corporations.

Subdivisions (b) and (c) are new. The “discipline” referenced in subdivision (b)(1) may include discipline for a violation of the governing documents, this act, or a fiduciary duty.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6530 (“board”), 6532 (“common area”), 6548 (“director”), 6550 (“exclusive use common area”), 6552 (“governing documents”), 6564 (“separate interest”).

Notes. (1) Proposed Section 6758(a) would correct an apparently erroneous reference to Corporations Code Section 310, which governs for-profit corporations. The reference would be replaced with a reference to Corporations Code Sections 7233 and 7234, which state equivalent rules for nonprofit mutual benefit corporations.

(2) Subdivision (b) is added to provide simplified guidance to association board members on impermissible conflicts.

(3) Subdivision (c) makes clear that the section is not intended as a complete codification of the law governing director conflicts of interest.

Article 4. Government Assistance

~~§ 6760 (REVISED). Director training course~~

~~6760. To the extent existing funds are available, the Department of Consumer Affairs and the Department of Real Estate shall develop an online education course for the board regarding the role, duties, laws, and responsibilities of directors and prospective directors, and the nonjudicial foreclosure process.~~

Comment. With respect to a commercial or industrial common interest development, Section 6760 continues the substance of Section 1363.001, except as indicated below.

The following nonsubstantive changes were made:

- The term “board of directors” has been replaced with the defined term “board.” See Section 6530 (“board”).
- The defined term “director” is used in place of “board member.” See Section 6548 (“director”).
- “On-line” was replaced with “online” to reflect modern usage.

For further information, see Section 6500 Comment.

§ 6762 (REVISED). State registry

6762. (a) To assist with the identification of common interest developments, each association, whether incorporated or unincorporated, shall submit to the Secretary of State, on a form and for a fee not to exceed thirty dollars (\$30) that the Secretary of State shall prescribe, the following information concerning the association and the development that it manages:

(1) A statement that the association is formed to manage a common interest development under the ~~Commercial and Industrial Common Interest Development Act~~.

(2) The name of the association.

Non-residential

(3) The street address of the association's onsite office, or, if none, of the responsible officer or managing agent of the association.

~~(4) The name, address, and either the daytime telephone number or e-mail address of the president of the association, other than the address, telephone number, or e-mail address of the association's onsite office or managing agent.~~

(5) The name, street address, and daytime telephone number of the association's managing agent, if any.

(6) The county, and if in an incorporated area, the city in which the development is physically located. If the boundaries of the development are physically located in more than one county, each of the counties in which it is located.

(7) If the development is in an unincorporated area, the city closest in proximity to the development.

(8) The nine-digit ZIP Code, front street, and nearest cross street of the physical location of the development.

(9) The type of common interest development, as defined in Section 6534, managed by the association.

~~(10) The number of separate interests, as defined in Section 6564, in the development.~~ [This text is unsuited for grid condominiums]

(b) The association shall submit the information required by this section as follows:

(1) By incorporated associations, within 90 days after the filing of its original articles of incorporation, and thereafter at the time the association files its biennial statement of principal business activity with the Secretary of State pursuant to Section 8210 of the Corporations Code.

(2) By unincorporated associations, in July of 2003, and in that same month biennially thereafter. Upon changing its status to that of a corporation, the association shall comply with the filing deadlines in paragraph (1).

(c) The association shall notify the Secretary of State of any change in the street address of the association's onsite office or of the responsible officer or managing agent of the association in the form and for a fee prescribed by the Secretary of State, within 60 days of the change.

(d) The penalty for an incorporated association's noncompliance with the initial or biennial filing requirements of this section shall be suspension of the association's rights, privileges, and powers as a corporation and monetary penalties, to the same extent and in the same manner as suspension and monetary penalties imposed pursuant to Section 8810 of the Corporations Code.

(e) The Secretary of State shall make the information submitted pursuant to paragraph (4) of subdivision (a) available only for governmental purposes and only to Members of the Legislature and the Business, Transportation and Housing Agency, upon written request. All other information submitted pursuant to this section shall be subject to public inspection pursuant to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title

1 of the Government Code. The information submitted pursuant to this section shall be made available for governmental or public inspection.

Comment. With respect to a commercial or industrial common interest development, Section 6762 continues Section 1363.6 without change, except as indicated below.

The following substantive change was made:

- A reference to this act is substituted for a reference to the Davis-Stirling Common Interest Development Act.

The following nonsubstantive changes were made:

- Cross-references are updated to reflect the new location of the referenced provisions.
- The redundant phrase “of the association” is omitted in subdivision (a)(4).
- Superfluous references to definition sections are not continued.
- Obsolete transitional dates are omitted in subdivisions (d) and (e).

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6534 (“common interest development”), 6564 (“separate interest”).

CHAPTER 6. ASSESSMENTS AND ASSESSMENT COLLECTION

Article 1. Establishment and Imposition of Assessments

may levy regular and special assessments in accordance with

§ 6800 (REVISED). Levy of assessment

~~6800. The association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this act.~~

Comment. With respect to a commercial or industrial common interest development, Section 6800 continues the first sentence of Section 1366(a) without change, except as indicated below.

The following nonsubstantive changes were made:

- The term “title” is changed to “act.”
- A superfluous reference to the remainder of Section 1366 is deleted.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6552 (“governing documents”).

§ 6804 (REVISED). Exemption from execution

6804. (a) Regular assessments imposed or collected to perform the obligations of an association under the governing documents or this act shall be exempt from execution by a judgment creditor of the association only to the extent necessary for the association to perform essential services, such as paying for utilities and insurance. In determining the appropriateness of an exemption, a court shall ensure that only essential services are protected under this subdivision.

(b) This exemption shall not apply to any consensual pledges, liens, or encumbrances that have been approved by a majority of a quorum of members, pursuant to Section 6524, at a member meeting or election, or to any state tax lien, or to any lien for labor or materials supplied to the common area.

Comment. With respect to a commercial or industrial common interest development, Section 6804 continues Section 1366(c) without change, except as indicated below.

The following nonsubstantive changes were made:

- Subdivisions are added.
- A reference to approval of a majority of members casting a vote at a meeting at which a quorum is established has been replaced with a reference to the standard provision on approval by a majority of a quorum of members (Section 4070).
- Quorum-related language from former Section 1366(b)-(c) is not continued.
- A reference to “title” is changed to “act.”

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6552 (“governing documents”), 6554 (“member”).

Note. Both Section 1366(a) and (b) contain the following sentence: “For the purposes of this section, ‘quorum’ means more than 50 percent of the owners of an association.” Although those provisions purport to apply to the “section” as a whole, the fact that the sentence is repeated in subdivisions (a) and (b) suggests that the intention may have been to limit the application of the sentence to just those subdivisions. If so, then the special quorum rule would not apply to the reference in Section 1366(c) to “any consensual pledges, liens, or encumbrances that have been approved by the owners of an association, *constituting a quorum*, casting a majority of the votes at a meeting or election of the association...” (Emphasis added.) Proposed Section 6804 is drafted on the basis of that interpretation, and does not include the special quorum rule.

Article 2. Assessment Payment and Delinquency

§ 6808 (REVISED). Assessment debt and delinquency

6808. (a) A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney’s fees, if any, and interest, if any, as determined in accordance with subdivision (b), shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied.

(b) Associations are hereby exempted from interest-rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this section.

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6808 continues the first sentence of Section 1367.1(a) without change, except as indicated below.

The following nonsubstantive change was made:

- A cross-reference is updated to reflect the new location of the referenced provision.

With respect to a commercial or industrial common interest development, subdivision (b) continues Section 1366(f) without change.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6564 (“separate interest”).

§ 6810 (REVISED). Payments

6810. (a) ~~Any payments made by the owner of a separate interest toward assessments shall first be applied to the assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney’s fees, late charges, or interest.~~

(b) When an owner makes a payment, the owner may request a receipt and the association shall provide it. The receipt shall indicate the date of payment ~~and the person who received it.~~

(c) The association shall provide a mailing address for overnight payment of assessments.

Comment. With respect to a commercial or industrial common interest development, Section 6810 continues the substance of Section 1367.1(b), except as indicated below.

The following nonsubstantive changes were made:

- A superfluous reference to assessment debt “set forth, as required in subdivision (a)” is deleted to make the meaning of the provision clearer.
- Subdivisions are added.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6564 (“separate interest”).

Note. Existing Section 1367.1(b) refers to payments made toward “the debt set forth, as required in subdivision (a)...” The purpose of that language is unclear and it is potentially problematic. It could be understood as limiting the right established in Section 1367.1(b) to debts that have been properly noticed, pursuant to Section 1367.1(a). In other words, if the association makes a technical mistake in describing the debt, the member’s right to pay off the principal first might not apply. The staff sees no policy reason for such a result. The limiting language would not be continued in proposed Section 6810.

§ 6812 (REVISED). Pre-lien notice

6812. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under Section 6808, the association shall notify the owner of record in writing by certified mail of the following:

(a) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed:

“IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION.”

(b) An itemized statement of the charges owed by the owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney’s fees, any late charges, and interest, if any.

(c) A statement that the owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the association.

Comment. With respect to a commercial or industrial common interest development, Section 6812 continues the second sentence of Section 1367.1(a), and paragraphs (1) to (3) of that provision, inclusive, without change, except as indicated below.

The following nonsubstantive change was made:

- A cross-reference is updated to reflect the new location of the referenced provision.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6564 (“separate interest”).

§ 6814 (UNCHANGED). Notice of delinquent assessment

6814. (a) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with subdivision (b) of Section 6808, shall be a lien on the owner’s separate interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with subdivision (b) of Section 6808, a legal description of the owner’s separate interest in the common interest development against which the assessment and other sums are levied, and the name of the record owner of the separate interest in the common interest development against which the lien is imposed.

(b) The itemized statement of the charges owed by the owner described in subdivision (b) of Section 6812 shall be recorded together with the notice of delinquent assessment.

(c) In order for the lien to be enforced by nonjudicial foreclosure as provided in Sections 6820 and 6822, the notice of delinquent assessment shall state the name and address of the trustee authorized by the association to enforce the lien by sale.

(d) The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association.

(e) A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an owner of the separate interest in the association’s records, and the notice shall be mailed no later than 10 calendar days after recordation.

~~(f) Upon receipt of a written request by an owner, delivered pursuant to Section 6512, identifying a secondary address for purposes of collection notices, the association shall send additional copies of any notices required by this article or by Section 6822 to the secondary address provided. The association shall notify owners of their right to submit secondary addresses to the association. The owner may identify or change a secondary address at any time.~~

Comment. With respect to a commercial or industrial common interest development, subdivisions (a)-(e) of Section 6814 continue the first five sentences of Section 1367.1(d) without change, except as indicated below.

The following nonsubstantive change was made:

- Cross-references are updated to reflect the new location of the referenced provisions.

With respect to a commercial or industrial common interest development, subdivision (f) continues Section 1367.1(k) without change, except as indicated below.

The following substantive change was made:

- The provision is revised to incorporate a standardized procedure for delivery of a document to an association. See Section 6512.

The following nonsubstantive changes were made:

- A cross-reference is added to reflect the new location of a referenced provision.
- Superfluous language relating to the identifying or changing of a secondary address during the collection process is deleted. Under subdivision (f), the association's obligation to send notices to a secondary address as requested by a member in all cases turns on the receipt of the request by the association.
- A requirement that a specified notification to owners be included in the annual budget has been deleted.

For further information, see Section 6500 Comment.

See also Sections 6528 ("association"), 6534 ("common interest development"), 6546 ("declaration"), 6560 ("person"), 6564 ("separate interest").

§ 6816 (REVISED). Lien priority

6816. A lien created pursuant to Section 6814 shall be prior to all other liens recorded subsequent to the notice of delinquent assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

Comment. With respect to a commercial or industrial common interest development, Section 6816 continues Section 1367.1(f) without change, except as indicated below.

The following nonsubstantive changes were made:

- The phrase "notice of assessment" is replaced with the more specific "notice of delinquent assessment."
- A cross-reference is updated to reflect the new location of the referenced provision.

For further information, see Section 6500 Comment.

See also Section 6546 ("declaration").

Note. Section 1367.1(f) refers to the "notice of assessment." It appears that the intention was to refer to the "notice of delinquent assessment" specified in Section 1367.1(d). In order to avoid any ambiguity, proposed Section 6816 uses the more specific term.

§ 6818 (UNCHANGED). Lien release

6818. (a) Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest a copy of the lien release or notice that the delinquent assessment has been satisfied.

(b) If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

1 **Comment.** With respect to a commercial or industrial common interest development,
2 subdivision (a) of Section 6818 continues the sixth sentence of Section 1367.1(d) without change.

3 With respect to a commercial or industrial common interest development, subdivision (b)
4 continues Section 1367.1(i) without change.

5 For further information, see Section 6500 Comment.

6 See also Sections 6528 (“association”), 6564 (“separate interest”).

7 **§ 6819 (REVISED). Procedural noncompliance**

8 6819. An association that fails to comply with the procedures set forth in this
9 section shall, prior to recording a lien, recommence the required notice process.
10 Any costs associated with recommencing the notice process shall be borne by the
11 association and not by the owner of a separate interest.

12 **Comment.** With respect to a commercial or industrial common interest development, Section
13 6819 continues former Section 1367.1(l) without change, except as indicated below.

14 The following nonsubstantive change was made:

- 15 • A reference to “this section” is changed to “this article.”

16 For further information, see Section 6500 Comment.

17 See also Sections 6528 (“association”), 6564 (“separate interest”).

18 Article 3. Assessment Collection

19 **§ 6820 (REVISED). Collection generally**

20 6820. (a) Except as otherwise provided in this article, after the expiration of 30
21 days following the recording of a lien created pursuant to Section 6814, the lien
22 may be enforced in any manner permitted by law, including sale by the court, sale
23 by the trustee designated in the notice of delinquent assessment, or sale by a
24 trustee substituted pursuant to Section 2934a.

25 (b) Nothing in Article 2 (commencing with Section 6808) or in subdivision (a)
26 of Section 726 of the Code of Civil Procedure prohibits actions against the owner
27 of a separate interest to recover sums for which a lien is created pursuant to Article
28 2 (commencing with Section 6808) or prohibits an association from taking a deed
29 in lieu of foreclosure.

30 **Comment.** With respect to a commercial or industrial common interest development,
31 subdivision (a) of Section 6820 continues the substance of the second sentence of Section
32 1367.1(g), except as indicated below.

33 The following nonsubstantive changes were made:

- 34 • The introductory clause has been broadened to recognize the application of all restrictions
35 on collection that are provided in this article. See, e.g., Section 6826 (limitation on
36 assignment).
- 37 • Cross-references are updated to reflect the new location of the referenced provisions.

38 With respect to a commercial or industrial common interest development, subdivision (b)
39 continues Section 1367.1(h) without change, except as indicated below.

40 The following nonsubstantive change was made:

- 41 • Cross-references are updated to reflect the new location of the referenced provisions.

42 For further information, see Section 6500 Comment.

43 See also Sections 6528 (“association”), 6564 (“separate interest”).

1 **§ 6822 (REVISED). Foreclosure**

2 6822. (a) Any sale by the trustee shall be conducted in accordance with Sections
3 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages
4 and deeds of trust.

5 (b) In addition to the requirements of Section 2924, the association shall serve a
6 notice of default on the person named as the owner of the separate interest in the
7 association's records or, if that person has designated a legal representative
8 pursuant to this subdivision, on that legal representative. Service shall be in
9 accordance with the manner of service of summons in Article 3 (commencing with
10 Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.
11 An owner may designate a legal representative in a writing that is mailed to the
12 association in a manner that indicates that the association has received it.

13 (c) The fees of a trustee may not exceed the amounts prescribed in Sections
14 2924c and 2924d, plus the cost of service for the notice of default pursuant to
15 subdivision (b).

16 **Comment.** With respect to a commercial or industrial common interest development,
17 subdivision (a) of Section 6822 continues the third sentence of Section 1367.1(g) without change.

18 With respect to a commercial or industrial common interest development, subdivision (b)
19 continues the substance of Section 1367.1(j).

20 With respect to a commercial or industrial common interest development, subdivision (c)
21 continues the fourth sentence and paragraph (1) of Section 1367.1(g), without change.

22 For further information, see Section 6500 Comment.

23 See also Sections 6528 ("association"), 6564 ("separate interest").

24 **§ 6824 (REVISED). Limitations on authority to foreclose liens for monetary penalties and**
25 **damage to the common area**

an owner or the owner's

26 6824. (a) A monetary charge imposed by the association as a means of
27 reimbursing the association for costs incurred by the association in the repair of
28 damage to common area and facilities caused by a ~~member or the member's guest~~
29 or tenant may become a lien against the member's separate interest enforceable by
30 the sale of the interest under Sections 2924, 2924b, and 2924c, provided the
31 authority to impose a lien is set forth in the governing documents. ~~It is the intent of~~
32 ~~the Legislature not to contravene Section 2792.26 of Title 10 of the California~~
33 ~~Code of Regulations, as that section appeared on January 1, 1996, for associations~~
34 ~~of subdivisions that are being sold under authority of a subdivision public report,~~
35 ~~pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business~~
36 ~~and Professions Code.~~

37 (b) A monetary penalty imposed by the association as a disciplinary measure for
38 failure of a ~~member~~ to comply with the governing documents, except for the late
39 payments, may not be characterized nor treated in the governing documents as an
40 assessment that may become a lien against the ~~member's~~ separate interest
41 enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

42 **Comment.** With respect to a commercial or industrial common interest development,
43 subdivision (a) of Section 6824 continues the seventh and eighth sentences of Section 1367.1(d)
44 without change, except as indicated below.

an owner

owner's

The following nonsubstantive change was made:

- A reference to “common areas” is singularized.

With respect to a commercial or industrial common interest development, subdivision (b) continues Section 1367.1(e) without change, except as indicated below.

The following nonsubstantive changes were made:

- The introductory clause “except as indicated in subdivision (d)” is not continued.
- The undefined term “governing instruments” is replaced with the defined term “governing documents.”
- The undefined term “subdivision separate interest” is replaced with the defined term “separate interest.”

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6552 (“governing documents”), 6554 (“member”), 6564 (“separate interest”).

Notes. (1) Proposed Section 6824(b) would omit the introductory clause of Section 1367.1(e): “Except as indicated in subdivision (d). . . .” The staff sees nothing in Section 1367.1(d) that would operate as an exception to the rule stated in Section 1367.1(e).

(2) Proposed Section 6824(b) would substitute the defined term “governing documents” for the undefined term “governing instruments.”

(3) Proposed Section 6824(b) would substitute the defined term “separate interest” for the undefined term “subdivision separate interest.”

§ 6826 (REVISED). Assignment or pledge

~~6826. (a) An association may not voluntarily assign or pledge the association’s right to collect payments or assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the association.~~

(b) Nothing in subdivision (a) restricts the right or ability of an association to assign any unpaid obligations of a former member to a third party for purposes of collection.

Comment. With respect to a commercial or industrial common interest development, Section 6826 continues the first sentence of Section 1367.1(g) without change, except as indicated below.

The following nonsubstantive changes were made:

- The provision is divided into subdivisions.
- An introductory clause is added in subdivision (b) to make the relationship between the two provisions clearer.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6554 (“member”).

Note. Proposed Section 6826 would break the first sentence of Section 1367.1(g) into two subdivisions and add an introductory clause in the second provision, to better define their relationship. (In existing law the two provisions are joined by a semi-colon and the ambiguous conjunction “however.”).

§ 6828 (NEW). Application of article

6828. (a) Except as otherwise provided, this article applies to a lien created on or after January 1, 2014.

(b) A lien created before January 1, 2014, is governed by the law in existence at the time the lien was created.

Comment. Section 6828 is new. A lien created on or after January 1, 1986, and before January 1, 2003, is governed by Section 1367. A lien created on or after January 1, 2003 and before the operative date of the act that added this section, is governed by Section 1367.1 and Section 1367.4.

Note. Under existing law, Section 1367 governs liens recorded on or after January 1, 1986, but before January 1, 2003. Liens that are recorded on or after January 1, 2003, are governed by Section 1367.1 (except that inconsistent provisions of Section 1367.4 govern debts for assessments that arise on or after January 1, 2006). However, as this proposed legislation would make a portion of Section 1367.1 and the entirety of Section 1367.4 inapplicable to an exclusively commercial or industrial CID, for those CIDs the relevant date in this provision would be the operative date of this legislation.

CHAPTER 7. INSURANCE AND LIABILITY

See next page for new Section 6830

§ 6840 (REVISED). Limitation of member liability

6840. (a) It is the intent of the Legislature to offer civil liability protection to owners of the separate interests in a common interest development that have common area owned in tenancy-in-common if the association carries a certain level of prescribed insurance that covers a cause of action in tort.

(b) Any cause of action in tort against any owner of a separate interest arising solely by reason of an ownership interest as a tenant in common in the common area of a common interest development shall be brought only against the association and not against the individual owners of the separate interests, if both of the insurance requirements in paragraphs (1) and (2) are met:

(1) The association maintained and has in effect for this cause of action, one or more policies of insurance that include coverage for general liability of the association.

(2) The coverage described in paragraph (1) is in the following minimum amounts:

(A) At least two million dollars (\$2,000,000) if the common interest development consists of 100 or fewer separate interests.

(B) At least three million dollars (\$3,000,000) if the common interest development consists of more than 100 separate interests.

Comment. With respect to a commercial or industrial common interest development, Section 6840 continues Section 1365.9 without change, except as indicated below.

The following nonsubstantive changes were made:

- A superfluous cross-reference to a governing definition is not continued.
- A reference to “common areas” is singularized.
- Subdivision (b)(1) is revised to replace “which” with “that.”

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest development”), 6564 (“separate interest”).

6830. Limitation of director and officer liability

(a) A volunteer officer or volunteer director of an association that manages a non-residential common interest development, shall not be personally liable in excess of the coverage of insurance specified in paragraph (4) to any person who suffers injury, including, but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss as a result of the tortious act or omission of the volunteer officer or volunteer director if all of the following criteria are met:

(1) The act or omission was performed within the scope of the officer's or director's association duties.

(2) The act or omission was performed in good faith.

(3) The act or omission was not willful, wanton, or grossly negligent.

(4) The association maintained and had in effect at the time the act or omission occurred and at the time a claim is made one or more policies of insurance that shall include coverage for (A) general liability of the association and (B) individual liability of officers and directors of the association for negligent acts or omissions in that capacity; provided, that both types of coverage provide a minimum liability of at least one million dollars (\$1,000,000).

(b) The payment of actual expenses incurred by a director or officer in the execution of the duties of that position does not affect the director's or officer's status as a volunteer within the meaning of this section.

(c) An officer or director who at the time of the act or omission was a declarant or who was serving as an officer or director as a representative of declarant and who and is not an owner of a separate interest, is not a volunteer for the purposes of this section.

(d) Nothing in this section shall be construed to limit the liability of the association for its negligent act or omission or for any negligent act or omission of an officer or director of the association.

(e)(1) For purposes of paragraph (1) of subdivision (a), the scope of the officer's or director's association duties shall include, but shall not be limited to, both of the following decisions:

(A) Whether to conduct an investigation of the common interest development for latent deficiencies prior to the expiration of the applicable statute of limitations.

(B) Whether to commence a civil action against the builder for defects in design or construction.

(2) It is the intent of the Legislature that this section clarify the scope of association duties to which the protections against personal liability in this section apply. It is not the intent of the Legislature that these clarifications be construed to expand, or limit, the fiduciary duties owed by the directors or officers.

CHAPTER 8. DISPUTE RESOLUTION AND ENFORCEMENT

Article 1. Disciplinary Action

§ 6850 (REVISED). Schedule of monetary penalties

6850. (a) If an association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any association member for a violation of the governing documents, including any monetary penalty relating to the activities of a guest or tenant of the member, the board shall adopt and distribute to each member, by individual notice, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for member discipline contained in the governing documents.

(b) A monetary penalty assessed against a member for a violation of the governing documents shall not exceed the monetary penalty stated in the schedule of monetary penalties that was most recently distributed to that member.

(c) An association shall provide a copy of the most recently distributed schedule of monetary penalties to any member on request.

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6850 continues the first sentence of Section 1363(g) without change, except as indicated below.

The following substantive changes were made:

- A reference to delivery by personal delivery or first class mail has been changed to incorporate the “individual notice” procedure.
- The term “invitee” was replaced with “tenant,” to make clear that the provision applies to tenants.

The following nonsubstantive changes were made:

- A reference to the “rules of the association” is superfluous and is not continued. The term “governing documents” encompasses rules. See Section 6552.
- The term “board of directors” has been replaced with the defined term “board.” See Section 6530 (“board”).

Subdivision (b) and (c) are new.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6552 (“governing documents”), 6553 (“individual notice”), 6554 (“member”).

Notes. (1) Subdivision (b) of proposed Section 6850 would provide that a monetary penalty assessed against a member for a violation of the governing documents may not exceed the penalty stated in whatever schedule of penalties was most recently distributed to that member.

(2) Subdivision (c) would require an association to provide a copy of the most recently distributed schedule of monetary penalties to any member that requested a copy.

~~§ 6854 (REVISED). No effect on authority of board~~

~~6854. Nothing in Section 6850 shall be construed to create, expand, or reduce the authority of the board to impose monetary penalties on a member for a violation of the governing documents.~~

Comment. With respect to a commercial or industrial common interest development, Section 6854 continues the substance of Section 1363(j) without substantive change, except as indicated below.

The following nonsubstantive changes were made:

- The term “board of directors of the association” has been replaced with the defined term “board. See Section 6530 (“board”).
- The phrase “or rules of the association” has not been continued.
- The phrase “an association member” was replaced with the defined term “member.” See Section 6554 (“member”).
- The reference to Section 6850 is narrower than the reference to “this section” in Section 1363(j), which encompassed the entirety of former Section 1363.

For further information, see Section 6500 Comment.

See also Section 6552 (“governing documents” includes the operating rules of the association).

Note. Existing Section 1363(j) refers to the entirety of Section 1363. Proposed Section 6854 would only refer to the provision of Section 1363 relating to member discipline that is continued in this act.

Article 4. Civil Actions

§ 6856 (UNCHANGED). Enforcement of governing documents

6856. (a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

(b) A governing document other than the declaration may be enforced by the association against an owner of a separate interest or by an owner of a separate interest against the association.

(c) In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney’s fees and costs.

Comment. With respect to a commercial or industrial common interest development, Section 6856 continues Section 1354 without change.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6546 (“declaration”), 6552 (“governing documents”), 6564 (“separate interest”).

§ 6858 (REVISED). Standing

6858. An association has standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the members, in matters pertaining to the following:

(a) Enforcement of the governing documents.

(b) Damage to the common area.

(c) Damage to a separate interest that the association is obligated to maintain or repair.

(d) Damage to a separate interest that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is obligated to maintain or repair.

Comment. With respect to a commercial or industrial common interest development, Section 6858 continues Section 1368.3 without change, except as indicated below.

The following nonsubstantive changes were made:

- The defined term “member” is used in place of “owner.” See Section 6554 (“member”).
- The superfluous phrase “established to manage a common interest development” is omitted.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6552 (“governing documents”), 6564 (“separate interest”).

§ 6860 (UNCHANGED). Comparative fault

6860. (a) In an action maintained by an association pursuant to subdivision (b), (c), or (d) of Section 6858, the amount of damages recovered by the association shall be reduced by the amount of damages allocated to the association or its managing agents in direct proportion to their percentage of fault based upon principles of comparative fault. The comparative fault of the association or its managing agents may be raised by way of defense, but shall not be the basis for a cross-action or separate action against the association or its managing agents for contribution or implied indemnity, where the only damage was sustained by the association or its members. It is the intent of the Legislature in enacting this subdivision to require that comparative fault be pleaded as an affirmative defense, rather than a separate cause of action, where the only damage was sustained by the association or its members.

(b) In an action involving damages described in subdivision (b), (c), or (d) of Section 6858, the defendant or cross-defendant may allege and prove the comparative fault of the association or its managing agents as a setoff to the liability of the defendant or cross-defendant even if the association is not a party to the litigation or is no longer a party whether by reason of settlement, dismissal, or otherwise.

(c) Subdivisions (a) and (b) apply to actions commenced on or after January 1, 1993.

(d) Nothing in this section affects a person’s liability under Section 1431, or the liability of the association or its managing agent for an act or omission that causes damages to another.

Comment. With respect to a commercial or industrial common interest development, Section 6860 continues Section 1368.4 without change.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6554 (“member”), 6560 (“person”).

This Chapter should be deleted in its entirety

CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

1

2 **§ 6870 (REVISED). Actions for damages**

3 6870. (a) Before an association files a complaint for damages against a builder,
4 developer, or general contractor (“respondent”) of a common interest development
5 based upon a claim for defects in the design or construction of the common
6 interest development, all of the requirements of this section shall be satisfied with
7 respect to the builder, developer, or general contractor.

8 (b) The association shall serve upon the respondent a “Notice of
9 Commencement of Legal Proceedings.” The notice shall be served by certified
10 mail to the registered agent of the respondent, or if there is no registered agent,
11 then to any officer of the respondent. If there are no current officers of the
12 respondent, service shall be upon the person or entity otherwise authorized by law
13 to receive service of process. Service upon the general contractor shall be
14 sufficient to initiate the process set forth in this section with regard to any builder
15 or developer, if the builder or developer is not amenable to service of process by
16 the foregoing methods. This notice shall toll all applicable statutes of limitation
17 and repose, whether contractual or statutory, by and against all potentially
18 responsible parties, regardless of whether they were named in the notice, including
19 claims for indemnity applicable to the claim for the period set forth in subdivision
20 (c). The notice shall include all of the following:

21 (1) The name and location of the project.

22 (2) An initial list of defects sufficient to apprise the respondent of the general
23 nature of the defects at issue.

24 (3) A description of the results of the defects, if known.

25 (4) A summary of the results of a survey or questionnaire distributed to owners
26 to determine the nature and extent of defects, if a survey has been conducted or a
27 questionnaire has been distributed.

28 (5) Either a summary of the results of testing conducted to determine the nature
29 and extent of defects or the actual test results, if that testing has been conducted.

30 (c) Service of the notice shall commence a period, not to exceed 180 days,
31 during which the association, the respondent, and all other participating parties
32 shall try to resolve the dispute through the processes set forth in this section. This
33 180-day period may be extended for one additional period, not to exceed 180 days,
34 only upon the mutual agreement of the association, the respondent, and any parties
35 not deemed peripheral pursuant to paragraph (3) of subdivision (e). Any
36 extensions beyond the first extension shall require the agreement of all
37 participating parties. Unless extended, the dispute resolution process prescribed by
38 this section shall be deemed completed. All extensions shall continue the tolling
39 period described in subdivision (b).

40 (d) Within 25 days of the date the association serves the Notice of
41 Commencement of Legal Proceedings, the respondent may request in writing to
42 meet and confer with the board. Unless the respondent and the association

LAW OFFICE OF
JEFFREY G. WAGNER
1777 N. CALIFORNIA BLVD., SUITE 200
WALNUT CREEK, CALIFORNIA 94596-4150

JEFFREY G. WAGNER
VIVIAN H. PARK

(925) 952-9021

FACSIMILE: (925) 952-9109
JWAGNER@JWAGNERLAW.COM
VPARK@JWAGNERLAW.COM

April 28, 2011

Via Email scohen@clrc.ca.gov

Steve Cohen
Staff Counsel
California Law Revision Commission
3200 Fifth Avenue
Sacramento, CA 95817

Re: CLRC Tentative Recommendation - February 2011
Commercial and Industrial Common Interest Developments

Dear Steve:

The purposes of this letter are to confirm the stakeholder group's support of CLRC's recommendation for a separate Act to regulate commercial developments and to provide additional information on the group's recommended revisions to CLRC's February 2011 Tentative Recommendation discussed at our meeting on April 20th. The members of the stakeholder group and additional supporters of CLRC's recommendations are identified in Exhibit A. The members consist of attorneys and property managers with substantial experience in either drafting governing documents for common interest developments or managing commercial developments.

The group's support of a separate Act is based on two primary considerations. A separate act would (1) statutorily recognize the distinct differences between residential and commercial developments and the interest of owners in each type of development and (2) eliminate a recurring problem when laws enacted to protect residential owners are inadvertently applied to commercial developments. The group supports CLRC's February 2011 Tentative Recommendation. We previously provided you with a marked-up copy of CLRC's draft of the Act setting forth certain recommended revisions. Pursuant to your request at our meeting on April 20th, we have set forth below additional information regarding certain of our recommended revisions:

Act's Name (§§6500 & 6531). We suggested that the name of the Act be changed to "Non-residential Common Interest Development" and proposed revisions to the definition in section 6531. Assuming two separate Acts are approved by the Legislature, it must be clear which Act applies in a particular development. While in most projects this should not be difficult to determine, there are an increasing number of developments that contain both commercial and residential characteristics.

For example, a development may include a single separate interest such as a lot or condominium unit that contains multiple dwelling units rented as apartments. While occupancy is for residential purposes, the rental operation is a commercial use. The occupants of the individual dwelling units within a single separate interest are tenants and as such do not have rights as an owner. In this situation the owner's use of the separate interest is not as an occupant but is as a landlord which is commercial. Because the Residential Act primarily protects individual owners of individual separate interests, the group feels the commercial characteristics of a separate interest containing multiple dwellings should control.

Other projects similarly have both residential and non-residential characteristics. Boat slips may be sold as condominiums and parking spaces may be sold either as condominiums or separate lots for use by recreational vehicles. These types of projects are primarily recreational but also may be used for residential purposes. Because the separate interest consists only space containing either water or land and airspace that will be occupied by a boat or mobile home not permanently affixed to the property and the use is primarily recreational rather than residential, the group feels these types of projects are appropriately regulated under the Non-residential Act.

Phased Condominium Projects (§6532). We recommend the word "entire" be deleted from 6532. This would eliminate problems with phased projects. Each condominium owner is required to receive a separate interest in a unit and undivided interest in the common area. This individual interest in common area need not be an undivided interest in the "entire" common area. This is often the case in phased projects. For example, if there are multiple condominium buildings within a single lot, an owner's common area interest may be limited to the common area situated within the building where the owner's unit is located and not in any of the other buildings. Deleting "entire" eliminates any ambiguity in this case.

Reciprocal Easement Agreements (§6562). There are numerous commercial projects in California operating under reciprocal easement agreements (REAs) which may inadvertently fall within the definition of a common interest development as a result of a 1992 amendment to the definition of planned development. The 1992 amendment expanded the definition of "common area" so that in addition to "common area" owned either by the owners in undivided interests or by an association, "common area" for a planned development was expanded to include mutual or reciprocal easement rights appurtenant to the separate interest. See Civil Code section 1351(b) and (k). These rights coupled with an association with lien rights makes the project a common interest development. This amendment was proposed by the California Department of Real Estate (DRE) to clarify that residential projects without common area in the traditional sense but with reciprocal easements (such as reciprocal easements over a common roadway) are considered common interest developments requiring a public report before the residential lots could be offered for sale.

Commercial projects operating under REAs, such as shopping centers with shared easements over parking areas and drive aisles, typically are managed by either one owner or a management company. The REAs authorize the levying of charges (i.e., assessments) against participating owners to pay for the commonly used easement areas and give the manager the power to lien delinquent owners. These

projects do not have an “association” in the traditional sense. Nonetheless because the Davis Stirling Act (“DSA”) specifically provides that the association may be incorporated or unincorporated (Civil Code section 1363(a)), the group of owners could be considered an “unincorporated association” within the meaning of Corporations Code section 18035(a). This would satisfy the association requirement and subject the project to the DSA requirements. Section 18035(a) reads as follows:

“‘Unincorporated association’ means an unincorporated group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not.”

As long as both residential and nonresidential developments were covered by the same Act, it could be argued that the definitional changes requested by the DRE applied only to residential projects. This argument is lost once nonresidential developments are subject to a separate Act.

Most owners in these types of projects and the attorneys preparing these REAs simply do not consider these projects as common interest developments. Furthermore, it appears very unlikely that the Legislature ever intended to include these types of projects as common interest developments subject to the DSA. We would urge CLRC to eliminate this ambiguity in the law.

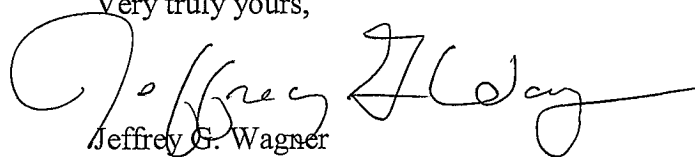
Condominium Plan Amendments (§6628). The current law requiring unanimous consent of owners and lenders to modify a condominium plan is a substantial impediment to the operation of commercial projects. There is a significant difference between residential and commercial condominiums in this regard. The size of each residential unit is fixed at the outset by the architect, which typically remains fixed throughout the life of the project. Most commercial condominium buildings, however, are constructed in shell condition and the size of each unit is determined by the buyers based on the buyers’ anticipated use. In addition commercial condominium uses and corresponding size needs vary often over the life of the project. The unanimity requirement means one owner or lender has veto power over any changes. Eliminating the unanimity requirement would eliminate many of the complex schemes to circumvent the requirement such as grid condominiums and would make it substantially easier to correct title problems when owners make size modifications without amending the condominium plan because of the difficulty (or impossibility usually on large projects) of obtaining the required unanimous consent from owners and lenders.

Attorneys’ Fees (§6856). The provision awarding attorneys’ fees to the prevailing party was added to Civil Code section 1354 by an amendment passed in 1990. This is another example of a change added primarily to protect the interests of individual residential owners, particularly in actions between an owner and the association. The group does not feel it is appropriate to automatically include attorneys’ fees to the prevailing party in a dispute over governing documents in a non-residential development. Owners of commercial interests should retain the right to choose whether or not to award attorneys’ fees to the prevailing party in this situation.

Application of Act (§6505). An issue we failed to discuss at our meeting was an interpretive problem with section 6505. Existing non-residential CC&Rs may include a specific reference to a DSA section that will no longer be applicable when the new Acts become effective. For example the CC&Rs may require the association to comply with the election and voting requirements in Civil Code section 1363.03. Does Civil Code section 6505 mean the association must continue to comply with the statutory requirements that no longer exist and that have not been in effect transferred to the Non-residential Act? In addition, what is the result if instead of simply referring to the statute by reference, the CC&Rs actually incorporate the entire statutory requirements in the CC&Rs? The group recommends that section 6585 be modified so that a provision in existing non-residential CC&Rs whether by specific reference to a statute or by incorporation of the statutory content to provisions in a prior law no longer applicable to non-residential common interest developments would not be applicable unless the owners elect otherwise.

If you or Brian have any questions or comments on any of the above, please contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey G. Wagner". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jeffrey G. Wagner

JW/ya

cc: Brian Herbert Via Email bherbert@clrc.ca.gov

EXHIBIT A

STAKEHOLDER GROUP AND SUPPORTERS

Marty Bohl, Attorney
501 West Broadway, Suite 520
San Diego, CA 92101

Karen Conlon, Property Manager
California Association of Community
Managers
23461 South Pointe Dr., Suite 200
Laguna Hills, CA 92653

Cathy Croshaw, Attorney
Luce, Forward, Hamilton & Scripps
LLP
121 Spear Street, Suite 200
San Francisco, CA 94105

Mark Guithues, Attorney
Community Legal Advisors
18 Technology Drive, Suite 154
Irvine, CA 92618

Scott Jackson, Attorney
Jackson/DeMarco/Tidus/Peckenpaugh
2030 Main Street, 12th Floor
PO Box 19704
Irvine, CA 92623-9704

Brent Kocal, Property Manager
Kocal Properties, Inc.
P.O. Box 1459
Folsom, CA 95763

Duncan McPherson, Attorney
Neumiller & Beardslee
509 West Weber Avenue
Fifth Floor
Stockton, CA 95203

Peter Saputo, Attorney
Little & Saputo
1901 Olympic Blvd., Suite 100
Walnut Creek, CA 94596-5024

Nancy Scull, Attorney
Luce, Forward, Hamilton & Scripps
600 West Broadway, Suite 2600
San Diego, CA 92101

Marty Stein, Attorney
Samuel, Green, Steel & Adams
19800 MacArthur Blvd., Suite 1000
Irvine, CA 92612

Craig Stevens, Property Manager
Mar West Real Estate
250 El Camino Real Suite 210
Tustin, CA 92780

David Van Atta, Attorney
Hanna & Van Atta
525 University Avenue, Suite 600
Palo Alto, CA 94301

Jeffrey G. Wagner, Attorney
Law Office of Jeffrey G. Wagner
1777 N. California Blvd., Suite 200
Walnut Creek, CA 94596

Chris Waud, Attorney
Little & Saputo
1901 Olympic Boulevard, Suite 100
Walnut Creek, CA 94596-5024